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SUBCOMMITTEE ON STATE LEGAL SERVICES AND ELECTION LAWS

STATE LEGAL SERVICES

November 1978

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STATE LEGAL SERVICES

A REPORT TO THE FORTY-SIXTH LEGISLATURE

SUBCOMMITTEE ON STATE LEGAL SERVICES AND ELECTION LAWS

November 1978

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SUMMARY OF RECOMMENDATIONS

The Interim Subcommittee on State Legal Services and Election Laws recommends that:

1. the 46th Montana Legislature enact a bill to insure appropriate, economical, and efficient use of attorneys by the executive branch of state government which:
 - (a) provides for a legal assistance program in the office of the Attorney General;
 - (b) creates a Legal Services Review Board; and
 - (c) requires strict accountability for all state legal services;
2. all costs related to the hiring of attorneys approved by the proposed Legal Services Review Board be reported and placed on the Statewide Budget and Accounting System (SBAS);
3. the State Personnel Division in the Department of Administration:
 - (a) establish a class specification for paralegals in the State Classification Plan;
 - (b) modify the experience requirement for Lawyer III (grade 17) from the current five years to three years;
 - (c) establish a class specification for Lawyer V in the State Classification Plan;
 - (d) review the lawyer positions which have responsibility for the administration of legal services within a state executive department with a view towards establishing a uniform Legal Administrator series within the State Classification Plan;
 - (e) direct the Classification Bureau in conjunction with a committee of staff attorneys from various state executive agencies to complete an overall review of the current lawyer series and the classification of lawyers;
4. more flexibility be allowed in the state pay plan to permit state executive agencies to grant staff attorneys "step increases" within each classification and pay grade;

5. The Attorney General draft legislation to establish a formal reporting system for state litigation which:
 - (a) requires that the Attorney General be served with a copy of the complaint each time a state executive agency or officer is named as the defendant in any legal proceeding;
 - (b) requires state executive agencies to serve the Attorney General whenever a state executive agency commences any legal proceeding in a court of law; and
 - (c) requires a state executive agency to report upon request of the Attorney General on the progress of pending litigation being conducted or by that agency.

HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY OF THE ORGANIZATION OF LEGAL SERVICES WITHIN THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT.

WHEREAS, the various departments, boards, and commissions of the state executive branch employ or retain a large number of attorneys; and

WHEREAS, it is a principle of courtroom law that a party to litigation should speak with one consistent position; and

WHEREAS, the agencies of the state of Montana do not appear before state or federal courts in a consistent position; and

WHEREAS, staff budgets are approved on an agency-by-agency basis, which results in smaller agencies either functioning without legal services or using retained counsel at more expensive rates, while larger agencies employing several attorneys may not have enough legal work to keep all their attorneys busy in all seasons of the year; and

WHEREAS, many state agency attorneys do not have enough courtroom work to develop skills in trial or appellate litigation, with the result that their agencies either forego effective representation in court or retain outside counsel for litigation at greater cost; and

WHEREAS, many of the foregoing problems are not present to the same degree in states having a unified legal service for all state agencies under the state's chief legal officer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the organization of legal services within the executive branch of state government, examining alternatives as used in other states, and to recommend such changes in the present system in Montana as would supply effective legal services to state agencies with more coordination, efficiency, and economy without interfering with the rightful prerogatives and program responsibilities of the governor and other elected officials.

Approved April 14, 1977.

INTRODUCTION

Effective legal representation of the wide-ranging and complex interests of state government executive agencies is of tremendous importance to people of Montana. Large sums of money, often many millions of dollars, are at stake. Decisions adverse to the state have great potential to place severe limitations on the powers of state government. Some suits define the balance and extent of powers within state governments.

Second, in addition to litigation, day-to-day advice to state agencies has a major impact on the orderly conduct of state affairs. Complex legal frameworks form the guidelines for daily decisions for many agencies. For example, the primary function of some agencies is administration of federal funds within the detailed rules and regulations prescribed by the federal government. For such agencies, legal problems are particularly inseparable from ongoing operations.

It is not surprising that the legislature has become concerned about ambiguities that exist in the current system of legal representation of state agencies in the executive branch. The structure and organization of state legal services in Montana is fragmented and disjointed. The Attorney General is the authorized attorney for several state agencies, while numerous other agencies in the executive branch have specific statutory authority to hire their own attorneys. The statutes establishing other state agencies are silent on the subject.

Various departments, boards, and commissions of the state executive branch employ, retain, and otherwise contract on a fee basis a large number of attorneys. Little attempt is made to coordinate litigation within the executive branch so that the state speaks with one consistent position. The scope of state legal services varies among agencies in the executive branch. The relationship of these executive agency legal services to the Governor and to the Attorney General, both elected officials, is uncertain.

The 45th Legislature recognized the need to study the organization of legal services in the executive branch. HJR 59, which outlined some of the perceived problems with the present structure of state legal services and recommended legislative investigation, was adopted April 14, 1977. The Committee on Priorities assigned the interim study to the Subcommittee on State Legal Services and Election Laws.

The major tasks of the Subcommittee were:

- 1) *the assessment of the status of attorneys and legal services in and for state government; and*
- 2) *the development of appropriate recommendations to enhance the provision of coordinated and economical state legal services.*

SUBCOMMITTEE DELIBERATIONS

At its first working session in August 1977, the Subcommittee organized itself, outlined the scope of study, and approved the research design and a detailed work plan. Subsequent meetings of the Subcommittee focused on a review of existing authority for providing state legal counsel by state executive agencies and the related costs associated with the provision of state legal services. Working in close collaboration with the office of the Attorney General and the office of the Governor, the Subcommittee and its staff were able to begin to define the contours of the current system of state legal services and to develop the broad outline of draft legislation and suggested recommendations aimed at improving the legal representation of Montana's executive branch. The final two meetings of the Subcommittee were devoted to the final "markup" of draft legislation and refinement of related Subcommittee recommendations.

On August 4, 1978, the Subcommittee met for its final deliberations and unanimously approved a legislative proposal "to insure the appropriate, economical, and efficient use of attorneys by the executive branch; to provide a legal assistance program in the office of the Attorney General; and to create a Legal Services Review Board." Additional conclusions and recommendations together with the Subcommittee's rationale are contained in this report along with a summary of the information gathered by the Subcommittee during the course of their legislative inquiry into the status of Montana's state legal services.

All supporting documents, research, and comprehensive minutes of the Subcommittee on State Legal Services and Election Laws are on file with the Legislative Council and are available to any legislator in the reference library.

ISSUES AND QUESTIONS

In undertaking the assessment of state legal services, the Subcommittee on State Legal Services and Election Laws posed a number of questions for consideration. The central question was:

Who shall control which legal activity in the executive branch of state government?

Traditionally, the Attorney General has represented agencies in civil litigation and in providing general legal advice. However, a number of agencies have engaged private law firms and organized their own, in some cases quite sizeable, legal staffs. Although the Attorney General frequently must work closely with these attorneys and follow through on their efforts when representing agencies in court, the Attorney General has little control over their quality of performance.

A similar situation exists for the Governor who likewise exercises limited control over the quality and performance of agency attorneys, although their work many times has important policy implications for state governments.

Among the questions and policy concerns that were identified during the conduct of the study were the following:

1. To what extent should legal talent employed by the state agencies report to the Attorney General or to the Governor?
2. Who should handle litigation for a state agency?
3. Who should decide whether agencies need to have "house counsel" assigned to them?
4. Who should decide whether agencies need to seek legal services outside the agency or the Attorney General's office?
5. Who should supervise and evaluate attorneys working for state government?
6. Should the Attorney General have the sole authority to appear for the state in court?
7. Should "house counsel" or special legal counsel litigate only if designated as a special Assistant Attorney General?
8. What is the proper role of the attorney in government?
9. Should Montana reduce the number of attorneys working in and/or for state government?

10. Should Montana increase the amount of legal services rendered to and for the state government?

11. Should salaries be increased to retain high quality legal counsel in state government?

12. Is it difficult for the state of Montana to attract and retain outstanding attorneys?

13. Is there a proper location and organization of attorneys working for state government?

These questions outline many of the major issues the Subcommittee confronted during its study. The remainder of this report describes Montana's existing state legal services apparatus, how it functions, what it costs, major problem areas identified, related organizational schemes in other states, some national trends, and the Subcommittee's conclusions and recommendations that grew out of their attempt to answer some of these controversial and complex questions.

DEFINING THE STATUS QUO

In order to assess the scope, organization, and related costs of legal services in and for the executive branch of state government, basic information was solicited from various departments and agencies in the executive branch. In all, 24 agencies were surveyed. Initial survey results and follow-up information were compiled for each member of the study subcommittee on an agency-by-agency basis. Copies of all raw data and related comments from the agencies were made available to Subcommittee members for study and individual analysis. The assembled information, which is admittedly incomplete, represents the most comprehensive attempt to date to develop an accurate, detailed, and complete description of the methods used by state executive agencies to meet their legal service needs and to determine the exact and relative costs associated with the various agency practices. The Subcommittee learned that basic information on attorneys working in or for state government is elusive, incomplete, and woefully inadequate. What information exists on the subject is unreliable at best. The survey results compiled by this interim legislative effort do provide a basic description of the present legal resources available to the executive branch of state government in Montana.

The agency-by-agency survey was restricted by committee direction to fiscal years 1976 and 1977. Additional information was gathered for part of FY 1978.

The time frame of the study - approximately 2 1/2 years - did not generate the type of data from which long range trends in the provision of legal services in the executive branch can be readily discerned. The data gathered during the course of this study does, however, allow a foggy view of the contours of current practices and some elementary cost information. The following paragraphs attempt to sketch some basic patterns disclosed.

STAFF ATTORNEYS

All but three state agencies -- the Department of Agriculture, the Department of Military Affairs, and the Secretary of State -- employ in one form or another full-time equivalent (FTE) staff attorneys as "house counsel."

The salary and benefit costs of full-time staff attorneys in the executive branch of state government exceeds \$1.2 million per year. In FY 1976, 68 FTE's were authorized for the 21 agencies that employed full-time staff attorneys. The FTE authorization for those agencies was 72.75 for FY 1978. During the survey period of FY 1976 to FY 1978 there has been a .07% increase in the number of authorized FTE staff attorney positions. There does not appear to have been a significant increase in the use of full-time staff counsel for the state executive agencies.

Over a longer time there has been a significant growth in the use of full-time staff attorneys as "house counsel" to state agencies. In this regard, Montana mirrors the national experience --there has been a sharp increase in the number of attorneys employed on a full-time basis by states in recent years.

There are various reasons for this growth, including:

1. the implementation of new programs;
2. an increased number of suits against the state;
3. the overall growth in state government, with a concomitant growth in the need for legal services;
4. a decreased use of special legal counsel.

COSTS OF STAFF ATTORNEYS

The total cost of full-time staff attorneys for executive branch agencies is difficult to ascertain. The documented salary and benefit cost of full-time staff attorneys in the executive branch for FY 1976 was approximately \$1,066,740. The FY 1977 cost for salaries and benefits for staff attorneys was approximately \$1,173,203. Cost to the state for full-time staff attorney salaries alone for fiscal year 1978 was projected to range from \$1,277,000 to \$1,500,000. This does not include related supporting costs to agencies, such as rent, supplies, travel and per diem, long distance telephone calls, photocopying, and other support required for agency-based full-time legal staff.

SPECIAL LEGAL COUNSEL

The information provided by the state executive agencies surveyed indicates that all but five agencies -- the Departments of Agriculture, Business Regulation, Community Affairs, Military Affairs, and the Secretary of State -- retain or contract additional private sector attorneys to meet their legal service needs. Information on employment and compensation of outside counsel is not readily accessible. Few agencies account for such services as an individual budget item. These services are not itemized on the Statewide Budgeting and Accounting System; therefore, there is considerable variation from agency to agency in accounting methods for retained and contracted legal services. The state executive agencies use various criteria for establishing the level of compensation for special legal counsel. Some private sector attorneys and/or law firms are paid by contract on a lump-sum basis; some are paid on an hourly basis and some on a monthly retainer salary. Others are paid by a combination of the above. Nearly all special legal counsel used by state executive agencies during the survey period from FY 1976 to FY 1978 were compensated at rates significantly higher than full-time staff attorneys. Therefore, outside legal counsel are generally more costly than "house counsel."

State agencies do not adequately account for the total costs related to the provision of legal services by private sector attorneys. Few agencies were able to account for the billable hours for outside counsel who received compensation from the state during the survey period.

COSTS OF SPECIAL LEGAL COUNSEL

Most reported costs for special legal counsel do not reflect the total cost of using private sector attorneys to meet agency legal service needs. Supporting costs are usually not accounted for. Supplies, travel and per diem, secretarial support, long distance telephone calls, photocopying, and related miscellaneous expenses are not always included in

the numerous and varied compensation schemes used by the agencies to pay for private sector legal counsel. Some outside counsel have had state telephone system telephones in their private law offices during the period surveyed; others were provided agency credit cards for telephone calls. These costs are usually not accounted for nor are they always reported as a legal service expense. They logically represent a hidden cost of special legal counsel.

However, the information provided by the surveyed agencies as a base, it may safely be said that the state spends in excess of \$500,000 for retained and contracted legal services each year. The documented costs for FY 1976 were approximately \$477,949; for FY 1977 the costs were in excess of \$432,318. The costs for FY 1978 are nearly impossible to estimate; however, as of November 1, 1977, the costs for outside counsel were estimated to be in excess of \$160,000.

ATTORNEY ACTIVITIES, FUNCTIONS, AND WORKLOAD

Attorneys employed, retained, or contracted by the state perform a great variety of legal services. Many attorneys working for the state specialize in one or more subject areas. Overall, however, state legal services encompass most areas of the practice of law.

An attempt was made to get some sense of what attorneys do for state government. Each attorney who did business with the state during the period surveyed was asked to complete an individual attorney function survey. The survey attempted to find the nature of attorney services and to outline major activities performed, major work, and some measure of the time allocation for different activities. Full-time staff attorneys divide their time among a greater number of tasks than outside counsel, who reported more single-purpose activities. As might be expected, many special legal counsel reported more time representing agencies at hearings and in court. A substantial number of special legal counsel are employed to perform the hearing officer function to comply with some of the provisions of Montana administrative law. This is not surprising since it is estimated that there is a total of 2,500 administrative hearings held by state executive agencies in Montana each year.

Attorneys are performing some or all of the following kinds of work for state executive agencies in Montana:

providing legal services to agency personnel; drafting administrative rules and guidelines; representing agency at hearings, investigating possible law violations; representing agency interests in court; fulfilling agency advocacy responsibilities for individuals; drafting legal documents; providing legal information or advice to other departments and/or the public; nonlegal administrative work; liaison with the office of Attorney General; review of legal drafts; training paraprofessionals; drafting legislation; representing the agency before the Legislature; and answering citizen correspondence.

It is extremely difficult to determine the amount of time allocated by staff attorney and special legal counsel to the various attorney functions identified. Agency records are incomplete and little attention is devoted to analysis of the legal service workload on an agency level or government-wide.

CLASSIFICATION AND PAY

Since the implementation of the State Classification and Pay Plan in January 1975, Montana full-time staff attorneys in the executive branch are subject to position classification and pay plan control. The Classification and Pay Plan attempts to allow for equitable salary schedules for attorneys, based on the duties and responsibilities of individual positions. The position classification plan also provides a systematic arrangement of salaries which corresponds to an orderly position progression on a career ladder and allows opportunity for full-time staff attorney promotional possibilities.

Within the State Classification Plan, attorneys are generally classified into the lawyer series which is:

Lawyer I, Grade 13, \$13,489 - \$17,249

This class is the entry level in the series, requiring graduation from an accredited school of law and a license to practice law in the State of Montana.

Lawyer II, Grade 15, \$16,138 - \$20,040

This is the journeyman level lawyer and an employee is eligible for this classification after a year and a half of legal experience.

Lawyer III, Grade 17, \$19,338 - \$23,315

This is a lawyer with a particular specialty in a specific area of Montana law such as right-of-way, water rights or environmental law. Five years of experience, two of which must be in the special area of law, are required for this classification.

Lawyer IV, Grade 19, \$23,193 - \$27,261

This class represents the senior lawyer in the series and requires a minimum of six years of legal experience.

In addition to this series, there are a variety of Legal/Administrative positions requiring a background in law which have the responsibility of providing legal services for an agency. These positions currently range from grade 16 (\$17,672 - \$21,610) to grade 20 (\$25,396 - \$29,516).

The number and classes of positions are dependent on the legal responsibilities of the agency. A legal position under the State Classification Plan must first be established by the agency before the position can be classified. An agency's ability to design a position at the higher levels depends on the amount and type of legal work generated by the agency.

The lawyer series can be modified by two methods. (1) An agency can request a modification of the current class specifications or an agency can request additional levels or current levels at higher grade levels by initiating a classification request to the State Personnel Division (2) The Classification Bureau can modify the current series based on a review by its staff.

Several agencies headed by elected officials such as the offices of the Attorney General, the Commissioner of Higher Education, the State Auditor, and the Governor have attorney positions that are exempt from the State Classification and Pay Plan.

In FY 1978, full-time staff attorney positions in the state executive agencies were broken down by classification and grade into the following distribution:

Grade 13 -	7
Grade 14 -	1
Grade 15 -	22
Grade 16 -	2
Grade 17 -	8
Grade 18 -	5
Grade 19 -	3
Grade 20 -	2
<u>Exempt</u>	<u>16</u>

Total	66
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SALARIES

Montana full-time staff attorney salaries are competitive with other states in the region. A survey conducted by the Classification and Pay Plan Bureau provides a state-by-state comparison for Montana, Colorado, South Dakota, Idaho, Oregon, Wyoming, North Dakota, Utah, and Washington (Table I).

Montana's entry level position, Grade 13, is especially competitive at \$13,489. A survey of recent graduates of the University of Montana School of Law indicates that during the last two years the average starting salary for their graduates has been approximately \$11,300 - \$12,800 in private practice and approximately \$13,500 in government positions.¹ Most attorneys with the federal government start at GS-9 (step 1) level paying \$15,090 annually.

1. Correspondence from Margery H. Brown, Assistant Dean, School of Law, University of Montana, January 30, 1978.

TABLE I

MONTANA	COLORADO	SOUTH DAKOTA	IDAHO
Lawyer I (G-13)	13, 489-17, 247	13, 526-18, 144	Rates determined by the Attorney General
Lawyer II (G-15)	16, 138-20, 040	14, 928-20, 004	
Lawyer III (G-17)	19, 338-23, 315	17, 280-23, 148	
Lawyer IV (G-19)	23, 193-27, 261	20, 004-26, 784	
	OREGON	WYOMING	UTAH
Lawyer I	15, 000-19, 176	13, 836-18, 528	12, 530-18, 175
Lawyer II	19, 176-24, 456	17, 268-23, 136	14, 189-20, 851
Lawyer III	23, 280-29, 736	19, 044-25, 512	15, 440-22, 852
Lawyer IV	26, 964-34, 440		
	29, 736-37, 944		
	WASHINGTON	NORTH DAKOTA	
New Attorney	13, 800	11, 060-17, 488	
One one-half year	16, 200	16, 560-22, 188	
Five years	21, 200	20, 124-26, 964	
Six years	24, 300	24, 456-32, 272	
			-other levels-

1. Colorado - Some positions are classified, those under the attorney general are exempt.
2. South Dakota - No exceptions made to the pay Plan; however, new employees can be hired at the mid point of the range. Lawyers under the attorney general are exempt and receive higher salaries.
3. Idaho - All attorneys are exempt from the classification plan; the rate of pay is determined by the Attorney General.
4. Oregon - Positions are exempt. Pay levels determined by years of experience and expertise.
5. Wyoming - There are no exceptions to pay plan rules as a result of turnover.
6. North Dakota -
7. Utah - No pay exceptions because of turnover.
8. Washington - Pay is determined by the Attorney General; they are not classified.

AVERAGE OF THE STATES SURVEYED
13, 517-18, 145
16, 403-21, 559
19, 245-24, 170
22, 269-28, 288

A NAAG survey of government attorney salaries nationwide for fiscal year 1978 revealed the following.²

1. *Attorneys with no experience*

The salaries for attorneys with no experience range from a low of \$11,160 in Puerto Rico to a high of \$20,544 in Alaska. The median is \$14,612.

2. *Attorneys with two years' experience*

The salary range for attorneys with two years' experience ranges from a low of \$12,360 in Puerto Rico to a high of \$31,932 in Alaska. The national median for the current fiscal year is \$18,000.

3. *Attorneys with four years' experience*

Attorneys with four years' experience have a salary range from \$15,660 in Puerto Rico to \$37,000 in Alaska. The median is \$20,250.

4. *Attorneys with eight years' experience*

The salaries for government attorneys with eight or more years' experience range from \$17,600 in Iowa to \$42,876 in Alaska, with a median salary of \$25,000.

5. *Head of legal services for major state agencies*

The salary for a head of legal services for a major state agency runs from \$20,000 in Missouri to \$47,904 in Alaska. The current median salary for legal service heads in state government is \$30,000.

2. "Selected Statistics in the Office of Attorney General", The National Association of Attorneys General, December, 1977.

EXPERIENCE AND TENURE

In order to get a rough estimate of the experience and tenure of full-time staff attorneys in the executive agencies, these attorneys were compared by length of tenure with the agency and the number of years the attorney has been admitted to the Montana Bar. The last measure is admittedly crude but does reveal trends from which some generalizations can be made about relative experience of state government attorneys. Many attorneys working for the various executive agencies have recently come from out of state. The attorneys in many cases do have considerable experience prior to being admitted to the Montana Bar.

The vast majority of state agency attorneys are young and have limited experience in Montana courts. The average length of time state attorneys as a whole have been a member of the Montana Bar is approximately 6 years. The median, however, is 3.5 years.

Most agencies have an agency average which is less than the 6 years of Montana Bar membership. Exceptions are the Department of Highways with an agency average of 19.6 years of experience, the Commissioner of Higher Education's office with 9.6 years, and the Department of Institutions whose single staff attorney has been a member of the Montana Bar for 7.5 years.

Tenure with the agency can be used as another crude measure of experience. Of the 24 agencies surveyed, 18 agencies have an agency average tenure of less than 3 years for those full-time staff attorneys employed by the agency in FY 1976, FY 1977, and FY 1978. The average length of employment for all state staff attorneys during the three-year survey period is 2.7 years. The median tenure of all state staff attorneys is two years.

Only the Department of Highways at 8.7 years average tenure and the Department of Natural Resources with a 3.8 years average exceed the 3-year average agency tenure -- except for the following agencies which employ only one full-time staff attorney - Department of Institutions (4 years), Department of Livestock (4 years) and the Department of Professional and Occupational Licensing (5 years).

Tenure allows attorneys to develop specialized skills and intimate familiarity with agency operations. Montana's executive agencies do have a problem keeping staff attorneys with the agencies long enough to recoup the state's investment in training and recruiting.

Recruiting and training new attorneys is an expensive and lengthy process. With a large number of attorneys leaving government within two to three years, the state appears to be little more than a training ground for private sector

attorneys. Many staff attorneys have used their government work as a "steppingstone" to private practice. This "revolving door syndrome," as it has been called, has been widespread in Montana's executive branch in recent years. More than a few attorneys have left government employment for a private practice while continuing to maintain a relationship with their former state agency on a contract or retainer basis. It is not unusual to find a former staff attorney now working in private practice who receives more annual compensation from an executive agency for contract or retained legal services than he previously received from the same agency as a full-time staff attorney.

The adequacy of legal services in the executive branch depends upon the ability of individual government attorneys. It is unfortunate that many young attorneys look upon government service only as a period of training through which they will gain experience for careers in private practice. This problem has a two-fold aspect: (1) effective recruitment of attorneys; and (2) retention of attorneys for career service.

Compensation is frequently mentioned as the primary factor in the decision of staff attorneys to make a career with state government or to enter private practice. However, remuneration aside, other factors influence the recruitment and retention of competent staff attorneys in state government. The ability of government departments and agencies to recruit talented attorneys is a function of three variables: (1) the intrinsic interest or social importance of the agency's mission; (2) the extent to which the agency's legal work has a counterpart in the private bar; and (3) the extent to which there is an opportunity to handle litigation.

It is difficult to determine exactly who is responsible for the conduct of litigation on behalf of state executive agencies. What is the role of the Attorney General? What is the role of the Governor? What is the role of the agency directors? All seem to share this responsibility without any clear guiding policy or concept for the appropriate use of the state's legal resources.

CRITERIA FOR REFERRING LEGAL PROBLEMS TO THE ATTORNEY GENERAL

There is no clear understanding of the legal processes that connect the state executive agencies with the Attorney General. Each agency was asked the criteria it used in referring legal problems to the Attorney General. In response to this question, most agencies indicated that the Attorney General continues to act as counsel to the state executive agencies and is selectively contacted for advisory opinions and advice on the

conduct of litigation; however, on balance the criteria for referring legal problems to the Attorney General, if there is any at all, is subjective and haphazard.

Most agency responses indicate that they use informal criteria to determine when to contact the Attorney General. A request for a formal opinion in an area of "significant interest to the public" is a frequent reason to seek Attorney General assistance.

Other criteria mentioned in the executive agency responses to the Subcommittee survey include: need for an opinion with the force of law; legal questions regarding different opinions between state agencies; to avoid litigation; "matters of serious importance where law is unclear"; informal discussion of legal points is indicated; criminal conduct by state employees; questions regarding the application of new legislation; two agencies in conflict; or a case of "significant magnitude."

CRITERIA FOR REFERRING LEGAL PROBLEMS TO THE GOVERNOR

Criteria for referring legal problems to the Governor are also unclear. Agencies responded most frequently by citing "areas of policy" or problems that involve "policy" as their main criteria for referring legal matters to the Governor. Many agencies stated that they have no policy for referring any legal problems to the Governor. Most agencies do not refer routine matters but do refer legal problems of statewide importance affecting more than one agency. Frequently cited legal issues referred to the Governor's office were those in the area of Indian jurisdiction.

Other state executive agency problems that are routinely referred to the Governor include: problems that affect the executive budget; employee ethics; problems with political impact; problems which affect other agencies; and problems which affect the Governor's policies.

CRITERIA FOR SEEKING LEGAL SERVICES OUTSIDE THE AGENCY

There are no consistent criteria used by state executive agencies to obtain legal services from the private sector. Among the responses from state executive agencies the following were cited as the reasons used to justify a decision to seek legal services outside of government: when workload requires that outside counsel be sought; for legal expertise not existing in the agency; "to avoid conflict of interest", especially in the area of administrative law;

when attorneys with greater trial experience are needed; "geographical proximity to locus of the problem" for hearings officers; when the sum in controversy is substantial, or complex legal issues. The major determining factor mentioned by several agencies was available funds and budget limitations.

LEGAL RESEARCH AND INFORMATION

Legal research is not being shared among state executive agency attorneys. There is limited opportunity to share research and analysis with respect to problems common to several departments and agencies. There is little opportunity to benefit from the experience of fellow attorneys representing state government with respect to recurring issues. This does occur to some extent but primarily on an informal, ad hoc basis.

Information about pending or anticipated litigation is not generally available even to the Attorney General, the state's chief legal officer. Currently, there exists no reliable way for agencies to learn of litigation unless they are made party to the suit or another agency is gracious enough to contact them.

INTERAGENCY DISPUTES

The inconsistency in legal counsel given to and legal positions taken by the various departments and agencies of state government threatens the effective and efficient operation of state government. The noted lack of coordination of legal resources could cause state executive agencies to move in opposite policy directions at the same time.

There is great potential for continuing jurisdictional disputes among the agencies and departments of state government. There is no effective mechanism or method to resolve conflicts between agencies short of going to court. Disputes may arise among state executive agencies over the authority to administer a statute or regulation as well as on legal positions and strategies.

Section 21-15-103, MCA, provides some authority for the Governor in resolving conflicts short of litigation:

2-15-103. Policymaking authority and administrative powers of governor. In accordance with Article VI, section 4, of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the

execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final. (Emphasis added.)

This statute was enacted in 1971 as part of the package of legislation to implement executive reorganization.

Although most disputes are resolved through informal work sessions, some interagency disputes may continue and ultimately result in court litigation with state executive agencies arguing on different sides of an issue. At best, resolving disputes among state executive agencies through courtroom litigation allows a full airing of all issues. However, it may not be in the state's best interest to have two agencies in the executive branch resolve their differences in the courts. In some instances this procedure may be an inefficient and costly procedure for both state government and the private litigants.

ORGANIZATIONAL SCHEMES AND SOME TRENDS IN THE PROVISION OF STATE LEGAL SERVICES

"...any system of providing legal services for state governments involves some problems. The tremendous diversity among state systems shows that there is no consensus about what is the best approach. (Emphasis added.) While there seems to be a trend toward consolidating services under the Attorney General, this consolidation has led to further problems and has led some states to create independent counsel or to hire more special counsel."³

3. "Powers, Duties, and Operations of State Attorneys General," The National Association of Attorneys General, October, 1977.

ALTERNATIVE STATUTORY APPROACHES

There are a variety of statutory schemes currently operational for providing state legal services in other states. The following categories show the different approaches used:

- (1) Jurisdictions where the attorney general provides all legal services without exceptions (Connecticut, Guam, Minnesota, Oregon, Wyoming).
- (2) States where the attorney general provides all legal services for the executive branch but the legislative or judicial branches are authorized to employ counsel (Georgia, Utah, Washington).
- (3) States where the attorney general provides all legal services but is authorized or directed by statute to appoint deputies to serve state agencies (Delaware, North Dakota, South Carolina, South Dakota).
- (4) Jurisdictions where the attorney general provides most legal services but some agencies have specific authority to employ counsel (Alaska, California, Guam, Idaho, Indiana, Maryland, Nebraska, New Mexico, New York, Oklahoma, Pennsylvania, Vermont, Virginia, Wisconsin).
- (5) States where the statutes specify that some agencies shall be represented by the attorney general, some may hire their own counsel, and are silent about others (Montana).
- (6) States where any agency may hire counsel upon prior approval of the attorney general (Florida, Nevada, Maine).
- (7) States where any agency may hire counsel without the attorney general's authority (Kentucky, Tennessee, Texas).⁴

GOVERNOR-ATTORNEY GENERAL RELATIONSHIP

Many perceived problems relating to the design of an economical and efficient system for the provision of state legal services stem from conflicts that may exist between the governor's responsibility to provide direction, supervision, and control of the executive branch and the attorney general's traditional role and common law powers as chief legal advisor to the state. This conflict is aggravated and exacerbated when both are elected officials.

4. "The Structure of State Legal Services," The National Association of Attorneys General, December, 1976.

Attorneys general are publicly elected in 42 states. Gubernatorial appointment is the rule in the remaining 6 states and 3 territories. In Maine, he is selected by the Legislature and in Tennessee by the Supreme Court.

In states where both the governor and the attorney general are elected, their relationship may involve role conflict with regard to their perceptions of the public interest. It is argued by some that the governor cannot easily deal with the attorney general as legal advisor because the attorney general normally provides "yes-no" answers rather than discussion of the legal risks of various options. This potential problem also includes the possible functions that may normally occur in an attorney-client situation. However, the governor must work with the attorney general, even if they are of different political parties. The attorney general, unlike the legal advisor, can issue official opinions. The potential exists that the attorney general may pursue a course of action in a lawsuit which embodies policy directions adverse to that of the governor and the state executive agencies under his jurisdiction.

SPECIAL LEGAL COUNSEL VS. STAFF ATTORNEYS

In recent years state governments have tended to curtail the use of special legal counsel representation. The primary motivation for this change appears to be an attempt to save state money during times of scarce resources and increasing public demands. Many states tend to feel adequate legal services can be provided to state executive agencies at a lesser cost by full-time staff attorneys rather than by special legal counsel. Along with cost considerations, there has been concern that all state representation before the courts be properly supervised and coordinated. This is meant to assure that positions are taken which truly represent the interest of the state and are consistent with the general positions maintained in litigation by the attorney general and other agency attorneys working for the state executive offices.

CONTROL AND SUPERVISION

In order to achieve efficiency and economy along with adequate supervision and proper control, the National Association of Attorneys General recommends that the attorney general should appoint and control all attorneys who work in a legal capacity for state government. Few states, however, follow this practice. Nevertheless, there has been a trend in recent years toward greater consolidation of legal services under the attorney general. There is also a trend towards the physical consolidation of legal offices under the attorney. In 1971, NAAG recommended:

"All state legal staff should be under the attorney general's supervision; he should determine their salaries and increments, classifications and otherwise control personnel."⁵

The NAAG argues that the attorney general cannot effectively control legal staff if salaries and promotions are determined by another agency. While the attorney general should consult with other agencies, he should exercise final authority for all boards, commissions, departments, and agencies of state government in the field of legal services. Simiarly, another NAAG recommendation states:

"The attorney general should have sole authority to employ counsel and to represent the state in litigation."⁶

In Arizona, "no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services," except for agencies specifically exempted by law (Ariz. Rev. State. Ann. Section 41-192).

A Michigan statute states "all legal services, including representation before courts and administrative agencies, rendering legal opinions and providing legal advice to any state department or agency shall be performed by the attorney general and no state agency shall employ or enter into a contract with any other person for such services." (Mich. State. Ann. Section 1.185)

LIMITS ON THE PRIVATE PRACTICE OF FULL-TIME STAFF ATTORNEYS

Many states prohibit the private practice of law by attorneys who are employed by the executive branch of state government. The prohibition of private practice serves to diminish the possibility of conflicts of interest. Although outside legal practice by state executive agency attorneys may not be a serious problem in Montana at the present time, such legal practice may be inconsistent with the rightful claim of state government to the full services of its legal personnel. Some argue that private practice should be restricted by statute with exceptions allowed only for personal and family matters where they do not interfere with the performance of the attorney's official duties.

5. "Powers, Duties and Operations of State Attorneys General," The National Association of Attorneys General, October, 1977.

6. Ibid.

Private practice by the Attorney General is prohibited in 47 jurisdictions. In 22 of these it is prohibited by law, and in 25 by custom, policy ,or rule. There is a trend toward prohibiting private practice by full-time staff attorneys. Forty-four jurisdictions surveyed in 1975-76 by NAAG prohibited the private practice of law by full-time staff attorneys.

The following 15 states statutorily prohibit the private practice of law by staff attorneys: Alabama, Alaska, Arizona, Connecticut, Georgia, Hawaii, Iowa, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Utah, and Wyoming.

The following 27 states prohibit the private practice of law by staff attorneys by custom, policy, or rule: Arkansas, California, Delaware, Florida, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia*, and Wisconsin.

The following 9 states authorize the private practice of law by staff attorneys: Colorado, Kansas, Louisiana, Maine, Maryland, Missouri, Nebraska, Vermont, and West Virginia*.

*Prohibits private practice by policy in some agencies and permits private practice in other agencies.

RELEVANT MONTANA SUPREME COURT CASES

The Montana Court said in State ex. rel. Ford v. Young, that:

The office of attorney general, as it existed in England, was adopted as part of the governmental machinery, and that in the absence of express restrictions, the common law duties attach themselves to the office so far as they are applicable and in harmony with our system of government.

State ex. rel. Ford v. Young, 54 Mont. 401, 170 P. 947 (1918).

The Supreme Court held that authority to hire and retain attorneys does not rest exclusively with the Attorney General, and ruled that the Highway Commission had authority to employ and engage outside fee counsel without the approval of the Attorney General. The court said, "The question of whether he (the Attorney General) can hire, fire, and direct all legal representation of state officers or agencies, especially of the highway commission, depends here, upon whether the legislature has authorized the highway commission to do as it has done." Woodahl v. State Highway Commission et al., 155 Mont. 32, 465 P. 2d 818 (1970).

Montana's Supreme Court held that the Attorney General clearly has power to give counsel, advice, and representation; such power, however, is not exclusive, and the legislature may allow another agency to hire counsel. Woodahl v. Montana Board of Natural Resources and Conservation, 155 Mont. 32, 516 P.2d 388 (1973).

RECOMMENDED REMEDIAL ACTION

After the extensive review of the manner in which state executive agencies meet their legal service needs, the Subcommittee recognized the need for a series of coordinated remedial actions short of the wholesale revision of the current state legal services system and the related framework of relationships that have evolved from that system over the years. The Subcommittee learned that too little is known about the extent to which major problems exist with the present system. Even less is known about effective alternatives to the present system.

In order to determine the true dimensions of the problems related to the provision of state legal services, better information must be made available for analysis. Basic information, which up until now has remained elusive, must be systematically obtained and maintained for day-to-day management decisions and to improve policy decisions.

Elementary cost information, currently unavailable, must be gathered in the most comprehensive and accurate manner available to state government. The benefit and cost differentials between the use of staff attorneys versus the use of special legal counsel should be assessed on an agency-by-agency basis as well as across the state executive branch. Economy measures must be implemented which will, in the long run, not only save scarce government dollars but will begin to improve the quality of state government attorneys.

In short, the Subcommittee found that the need to better manage government attorneys and state legal services is clear. The Subcommittee identified a range of remedies to the perceived and alleged problems related to the provision of state legal services in and for the executive branch of state government. The following recommendations will go a long way toward improving the management of government attorneys and state legal services by "fine-tuning" Montana's current system of meeting the legal service needs of the state executive agencies; will begin to develop an accurate picture of the total costs and other related problems of our current system; will improve the quality of state legal services; will improve the recruitment and retention of staff attorneys; will reduce the need for special legal counsel; and will restore confidence in the accountability of the state legal services system.

RECOMMENDATION NO. 1

***The Subcommittee recommends that the 46th Montana Legislature enact a bill to insure appropriate, economical, and efficient use of attorneys by the executive branch of state government, which:*

- (1) *provides for a legal assistance program in the Office of the Attorney General;*
- (2) *creates a Legal Services Review Board; and*
- (3) *requires strict accountability for all state legal services.*

The Subcommittee believes that:

- (1) *the employment of experienced, full-time staff attorneys by the executive branch is an economical, efficient, and effective means of meeting the state's legal services needs;*
- (2) *the use of contract or retained special legal counsel should be limited and closely scrutinized;*
- (3) *a pool of highly competent full-time staff attorneys within the office of the Attorney General should be the "law firm" of first resort for any legal services needs beyond the capacity or ability of state executive agencies; and*
- (4) *there are instances when it is necessary for the executive branch to retain or otherwise hire special legal counsel outside of government to meet the state's legal services needs.*

Proceeding from these assumptions identified by the Subcommittee, the major features of the recommended legislation are:

A. A Legal Assistance Program in the Office of the Attorney General

The Subcommittee views the creation of a reservoir of highly competent staff attorneys under the legal supervision of the Attorney General as an important element in a larger effort to place greater emphasis on the development of highly professional, career-oriented staff attorneys in state government. The proposed legal assistance component

in the Attorney General's office could be the beginning of just such a career legal corps within state government. The legal assistance program would be separate from the Attorney General's personal staff. The attorneys employed by this program would be subject to the State Classification and Pay Plan. The legal assistance program would be designed to handle peakload, spillover legal work for the various state executive agencies. The attorneys in the pool would be highly skilled in litigation, appellate work, and legal research and would be able to provide a wide range of legal services to state executive agencies, thus reducing their current reliance on out of government special legal counsel. The legal assistance program in the Attorney General's office will be able to provide high quality legal services to state executive agencies at a reduced cost that should produce sizeable savings through increased efficiencies in operation and reduced reliance upon private sector attorneys. This program is not seen as a substitute for the development of in-house staff attorneys with the state executive agencies where there has been and continues to be a demonstrated need for permanent legal assistance. The Legislature, through the appropriations process, should periodically review, on an agency-by-agency basis, the need for full-time staff attorneys.

B. A Legal Services Review Board

The creation of a Legal Services Review Board composed of the Budget Director or his designated representative, the Attorney General or his designated representative, and the Chief Legal Counsel to the Governor is needed to review each state executive agency's request to hire special legal counsel outside of state government. No executive agency could hire special legal counsel without the written approval of the legal Service Review Board upon the demonstration of need and upon showing that the legal problem could not be handled by existing staff attorneys or the legal assistance program in the Attorney General's office. This body could supervise the state legal services system and prevent possible abuse. The mere existence of the Legal Services Review Board will deter the inappropriate use of special legal counsel and will contribute to reducing the state's legal services bill and will tend to aid the development of highly qualified staff attorneys within the executive branch. By reviewing requests and accounting for their total costs, the Legal Services Review Board will go a long way toward assuming the confidence and accountability so necessary to an effective system of state legal services.

C. Strict Accountability For All State Legal Services

The Subcommittee's investigations were hampered by the inadequacy of information concerning the provision of legal services to state executive agencies by special legal counsel. In order to rectify this deficiency, a uniform accounting procedure must be implemented to maintain a record of special legal counsel employed by state executive agencies, the nature of their services, and the number of billable hours charged to the agency together with all supportive service and overhead expenditures. The responsibility for insuring that this information is gathered and maintained should be statutorily required of the proposed Legal Services Review Board.

D. Delegation of Authority to Represent State

Confusion exists over the authority of attorneys representing the State in various matters. In many instances, statutory provisions require the Attorney General to represent a particular executive agency or board or perform a specific function. Often these functions are performed by agency staff attorneys. In many cases, agency staff attorneys have no authority or direction from the Attorney General. The Attorney General as chief legal officer of the state has a duty to see that the state receives adequate representation, especially in matters concerning litigation. Since Woodahl v. Board of Natural Resources, 163 Mont. 193, 516 P. 2d 383 (1973), it has become the practice for the Attorney General to issue agency attorneys a commission as Special Assistant Attorney General for the purpose of handling the legal affairs of the particular state executive agency. The present Attorney General does not want to issue commissions to individual attorneys over whom he has no control or supervision responsibility. The executive agencies are currently using staff attorneys and special legal counsel to represent their interests in legal matters. The proposed legislation would simply codify the status quo -- clarifying the right of attorneys hired by state executive agencies to represent that state executive agency in any legal proceeding and recognizing the authority of state executive agencies to hire full-time staff without the approval or sanction of the Attorney General.

RECOMMENDATION NO. 2

***The Subcommittee recommends that all costs related to the hiring of attorneys approved by the proposed Legal Services Review Board be reported and placed on the Statewide Budget and Accounting System (SBAS).*

The proposed legislation would require strict accountability for all state legal services. In order to maintain an accurate, uniform, and comparable accounting system for these state expenditures, the Subcommittee recommends that the Governor and the Department of Administration require all costs related to the hiring of special legal counsel be reported and placed on the Statewide Budget and Accounting System (SBAS). Budget categories and accounting entities currently exist in SBAS that would enable such information to be maintained in a uniform manner for all state executive agencies.

RECOMMENDATION NO. 3

***The Subcommittee recommends that the Personnel Division in the Department of Administration:*

- (1) establish a class specification for paralegals in the State Classification Plan;
- (2) modify the experience requirement for Lawyer III (grade 17) from the current five years to three years;
- (3) establish a class specification for Lawyer V in the State Classification Plan;
- (4) review the lawyer positions which have responsibility for the administration of legal services within a state executive department with a view towards establishing a uniform Legal Administrator series within the State Classification Plan; and
- (5) direct the Classification Bureau in conjunction with a committee of staff attorneys from various state executive agencies to complete an overall review of the current lawyer series and the classification of lawyers.

A. Paralegals

There has been a marked increase in the use of paralegals across the nation to increase the efficiency and to expedite the delivery of legal services. The Subcommittee feels that Montana state government can benefit from the national movement toward the use of paralegals. Paralegals are individuals who are not attorneys; who perform tasks that have traditionally been performed by attorneys; who are skilled in providing some legal services; and who work under the supervision of an attorney. There has been rapid acceptance of the use of this specialized group of people who are performing work that otherwise would be done by attorneys. The economic benefit to the State through the use of paralegals should be lower overall costs for legal services and an increased level of productivity. The Subcommittee sees paralegals as one method to help meet expanding workloads as economically as possible. It should be emphasized that paralegals constitute one solution to the problem but are not intended to obviate the need for highly competent staff attorneys where appropriate. The Attorney General has experimented with this approach to meeting some of the State's legal service needs and has found it an economical and reliable way to handle many routine legal problems.

At the urging of the Subcommittee, the State Personnel Division has agreed to establish the paralegal class specification after review and comment from the agencies. A draft class specification is included in Appendix G. The creation of a paralegal classification will enable state executive agencies to plan for and use paralegals as part of the attempt to meet their legal service needs in the future. This approach has merit and is encouraged by the Subcommittee.

B. Modify Lawyer III

The current lawyer series in the Classification and Pay Plan needs to be modified by reducing the current requirement of five years' experience for eligibility for the Lawyer III (grade 17) position. The Subcommittee believes that the five years requirement is excessive for the work performed by a Lawyer III. The interim study revealed that there is a significant turnover of staff attorneys who have from two to four years of service with the State. In order to retard the "revolving door syndrome" and to encourage the retention of competent staff attorneys, the Subcommittee recommends that the experience requirement for Lawyer III be modified from its current five years to three. The State Personnel Division has conducted an analysis of the situation and has agreed to make the recommended changes in class specification for Lawyer III.

C. Establish a Class Specification for Lawyer V

The current lawyer series should be expanded to include a class specification for Lawyer V in addition to the existing classifications for Lawyer I, Lawyer II, Lawyer III, and Lawyer IV. The Subcommittee recognizes the need for an expanded career horizon for government attorneys. The need to attract and retain attorneys of high professional ability is the cornerstone of the Subcommittee's strategy to improve the quality of state legal services. This is especially true for the attorneys who will be working with the proposed Legal Assistance Program in the Attorney General's office. In order to achieve the purposes intended by the Subcommittee, this program must recruit attorneys with extensive experience with litigation and a variety of related specialized legal skills. The class specification for Lawyer V would allow state government to pay a competitive salary for highly skilled attorneys while allowing those individuals to be covered by the State Classification and Pay Plan. It was argued that the career ceiling for state attorneys is too low and that there should be sufficient promise of a career to induce superior attorneys to remain -- permanently -- in state service. The State Personnel Division did not agree to create such a class specification for Lawyer V within the current lawyer series. The Subcommittee urges the creation of such a classification through the State Personnel Division; however, if this cannot be accomplished informally, the Subcommittee is prepared to recommend legislation to create a classification for Lawyer V to be available for attorneys assigned to the Legal Assistance Program in the Attorney General's office.

D. Review Lawyer Position with Administrative Responsibility

Over the recent years a number of special class specifications have been developed to classify the lawyer positions which have responsibility for the administration of legal services within a state executive agency. As legal staffs have grown within agencies, Lawyer/Administration positions have evolved. There appears to be no uniform standard for this individualized class specification. In many instances, it appears that the classification was developed to fit the individual occupying the position rather than the other way around. The Subcommittee feels this situation demands greater attention. The State Personnel Division has agreed to review the lawyer positions which have responsibility for the administration of legal services within a department and to establish a Legal Administrator series.

E. Overall Review of Current Lawyer Series

The Subcommittee recognized the need for further followup in the area of compensation and pay for staff attorneys. Greater attention should be paid to problems of recruitment and retention of staff attorneys. Exit interviews of attorneys leaving state government service may reveal more information about the "revolving door syndrome." The adequacy of the current lawyer series merits additional analysis by the Classification Bureau and attorneys currently employed by state government. Recruitment at the entry level does not appear to be a problem at this time. The real problem appears to be in the intermediate ranges of the legal services. Experienced trial lawyers appear to be the individuals in shortest supply. The State Personnel Division has agreed to review the current lawyer series and classification of lawyers in conjunction with the Classification Review Bureau and a committee of staff attorneys in state government. This should produce additional much needed information on the adequacy of the current lawyer series.

RECOMMENDATION NO. 4

***The Subcommittee recommends that more flexibility be allowed in the state pay plan to permit state executive agencies to grant staff attorneys "step increases" within each classification and pay grade.*

There should be more flexibility for department directors to make use of the thirteen steps within each pay grade in the State Classification and Pay Plan to provide for additional compensation in order to retain competent and experienced staff attorneys within state executive agencies. The Subcommittee feels that more flexibility in the pay plan rules to allow for merit increases would aid in the retention of skilled legal counsel.

RECOMMENDATION NO. 5

***The Subcommittee recommends that the Attorney General draft legislation to establish a formal reporting system for state litigation, which:*

- (1) *requires that the Attorney General be served with a copy of the complaint each time a state executive agency or officer is named as the defendant in any legal proceeding;*
- (2) *requires state executive agencies to serve the Attorney General whenever a state executive agency commences any legal proceeding in a court of law; and*
- (3) *requires a state executive agencies to report upon request of the Attorney General on the progress of pending litigation being conducted or considered by that agency.*

There is no formal centralized system for reporting matters of state litigation. As the chief legal officer of the state, the Attorney General is required to maintain a "docket" on all litigation and is empowered to represent the state in all matters before the courts. In addition, the Subcommittee believes that statutory requirements should establish a formal reporting system so that accurate records on the extent and nature of state litigation can be maintained. This formal reporting system will not achieve the degree of centralized control over litigation that is necessary to achieve "consistency" among state executive agencies that might otherwise pursue conflicting policies, but it will provide early warning to the Attorney General and to the Governor of any potential problems with pending or anticipated litigation. Early warning and increased information will enable the state legal service system to begin to control the volume and quality of litigation and should encourage the establishment of overall priorities for what cases get to court. Although the basic organizational structure of state legal services will remain essentially unchanged, this recommended feature, coupled with the other Subcommittee recommendations, should improve the overall coordination of state legal services. The Subcommittee found that state legal services are relatively uncoordinated and that there is, consequently, inefficiency in the performance of such services within the executive boards of state government. The Subcommittee believes that taken in their entirety the Subcommittee recommendations represent substantial measures to achieve better professional coordination in the rendition of state legal services.

***Other Topics Discussed by the Subcommittee*

A. Independent Administrative Hearings Examiner Program

The Subcommittee found that serious problems exist related to administrative law that require additional state legal services. The Subcommittee recognized that there is a need for independent hearings officers within state government. The Subcommittee was aware that this problem was under investigation and study by the Administrative Code Committee and the Legislative Audit Committee and felt that recommendations specific to the problems of administrative law and hearing examiners should be addressed by those interim legislative committees.

B. Administration of the Self-Insurance Program

The recently established self-insurance program, under which numerous attorneys throughout Montana are being called upon to defend the State, especially in the personal injury area, was addressed by the Subcommittee; however, no recommendations were made on this subject.

C. District Attorney/Defender System

At the present time the State pays one-half the salary of the county attorneys and those attorneys prosecute all criminal actions on behalf of the State. The counties are now required to pay for defense attorneys of indigent defendants charged in their counties. These defense charges in many instances create serious strains upon local budgets. Alternatives to the current system were suggested by the Attorney General. The Subcommittee made no recommendation on this matter.

A P P E N D I C E S

EXHIBIT I

FULL-TIME STAFF ATTORNEYS*

	FTE			COSTS	
	FY 76 (authorized/actual)	FY 77	FY 78	FY 76 FY 77	FY 78
Department of Administration	2/2	3/3	4/4	50,796	14,959
Department of Agriculture	0	0	0	0	0
Department of Business Regulation	2/2	2/2	2/2	29,815	31,460
Campaign Finances and Practices	1/1	1/1	1/1	8,105	14,511
Department of Community Affairs	3/3	2/2	2/2	42,805	35,720
Department of Fish and Game	1/1	1/1	1/1	39,235	43,595
Governor's Office	4/4	6/6	2/1	32,233	58,564
Department of Health & Environ. Sciences	4/3	4/4	6.75/5	51,071	67,488
Commissioner of Higher Education	5/5	4/4	5/5	66,508	85,629
Department of Highways	9/9	9/9	9/9	201,097	193,332

* (Information compiled February, 1978

EXHIBIT I (Cont.)

Department of Institutions	1/1	1/1	1/1	20,654	21,597	22,648
Department of Justice/ Attorney General	8/8	8/7	10/9	150,500	147,650	169,300
Department of Labor & Industry	8/8	6/6	5/5	80,438	86,100	73,848
Department of Livestock	1/1	1/1	1/1	17,585	18,970	19,897
Department of Military Affairs	0	0	0	0	0	0
Department of Natural Resources	4/4	5/4	5/4	65,096	70,046	84,884
Professional & Occupational Lic.	1/1	1/1	1/1	17,826	18,794	23,348
Public Service Commission	2/2	3/3	3/3	40,000	60,000	60,000
Office of Public Instruction	1/1	1/1	1/1	13,571	17,339	27,064
Department of Revenue	7/4.85	5/5.6	7/6	79,387	79,942	101,168
Secretary of State	0	0	0	0	0	0
State Auditor	1/1	1/1	1/1	19,500	9,625	14,580
Department of State Lands	2/2	2/1	2/2	24,990	7,186	37,040

EXHIBIT I (Cont.)

Department of Social & Rehabilitation Services	<u>1/1</u>	<u>2/2</u>	<u>3/3</u>	<u>15,528</u>	<u>30,696</u>	<u>54,217</u>
TOTALS	68/64.85	68/65.6	72.75/67	1,066,740	1,173,203	1,277,398*

* (Estimated February, 1978)

EXHIBIT II

RETAINED, CONTRACTED ATTORNEYS*

	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>
Department of Administration	(SUBMITTED INCOMPLETE INFORMATION)			9,000**	9,000**	9,000**
Department of Agriculture	0	0	0	0	0	0
Department of Business Regulation	0	0	0	0	0	0
Campaign Finances and Practices	0	1	0	0	9,032	0
Department of Community Affairs	0	0	0	0	0	0
Department of Fish and Game	2	3	3	33,011	67,929	15,000
Governor's Office	0	2	1	0	12,620	5,372
Department of Health & Environ. Sciences	2	3	2	9,143	9,141	6.245
Commissioner of Higher Education	1	0	0	6,000	0	0
Department of Highways	4	1	0	20,743	21,800	0
Department of Institutions	3	6	4	8,517	36,550	4,595
Department of Justice/ Attorney General	1	1.5	1	31,500	25,625	23,300
Department of Labor & Industry	3	8	6	21,958	42,707	19,277
Department of Livestock	2	2	0	5,041	4,959	0

* (Compiled February, 1978)

EXHIBIT II (Cont.)

Department of Military Affairs	0	0	0	0	0	0
Department of Natural Resources	6	9	7	234,704	64,294	18,110
Professional & Occupational Lic.	11	12	6	23,555	20,069	4,430
Public Service Commission	1	1	1	15,500	6,000	7,000
Office of Public Instruction	0	1	1	0	5,020	12,866
Department of Revenue	5	8	11	30,458	50,287	9,706
Secretary of State	0	0	0	0	0	0
State Auditor	0	1	0	0	2,024	0
Department of State Lands	2	2	1	3,017	7,752	1,068
Department of Social & Rehabi- litation Services	2	5	5	25,802	37,509	16,268
TOTALS	44	66	48	477,949	432,318	152,287*

* (Estimated February, 1978)

The above information does not include the costs related to the worker's compensation prosecution.

EXHIBIT III

AVERAGE LENGTH OF TIME FULL-TIME STAFF
ATTORNEYS MEMBERS OF MONTANA BAR - FY 1978*

	<u>Months</u>	<u>Years</u>
Department of Administration	36.6	3.05
Department of Agriculture	--	--
Department of Business Regulation	34	2.83
Campaign Finances and Practices	24	2.0
Department of Community Affairs	28	2.33
Department of Fish and Game	29	2.43
Governor's Office	18	1.5
Department of Health & Environmental Sciences	34	2.83
Commissioner of Higher Education	115	9.58
Department of Highways	235	19.58
Department of Institutions	90	7.5
Department of Justice/ Attorney General	35	2.92
Department of Labor & Industry	46	3.83
Department of Livestock	42	3.5
Department of Military Affairs	--	--

* (Compiled February, 1978)

EXHIBIT III (Cont.)

Department of Natural Resources	50	4.17
Professional & Occupational Licensing	66	5.5
Public Service Commission	17	1.42
Office of Public Instruction	9.5	.79
Department of Revenue	48	4
Secretary of State	--	--
State Auditor	30	2.5
Department of State Lands	36	3
Department of Social & Rehabilitation Services	17	1.42



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL DIVISION
MICHIGAN BUILDING
HELENA 59601

THE HON. JUDGE G. L. COOPER

August 3, 1978

Representative John Scully, Chairman
Legislative Interim Committee on
Legal Services and Election Laws
Legislative Council
Helena, Montana 59601

Dear Representative Scully:

I would like to inform you and the members of your committee what actions the Personnel Division has taken to address some of the problems this committee has under consideration. The major area of our concern is what can be done by the Personnel Division to assure that the State has the ability in its classification and pay plan to retain competent lawyers in State government.

The Personnel Division has sent a questionnaire to all Department Directors which is attached along with the responses. From the questionnaire it appears the Directors generally favor:

- a. Reducing the experience required for a Lawyer III from the current five-year requirement.
- b. Establishing a paralegal classification.
- c. Establishing more flexibility in the pay plan.

Based on our current analysis of the situation, the following actions will be taken by the Personnel Division:

1. The experience requirement for Lawyer III will be modified from its current five-years to three.
2. The paralegal class specification will be established after review and comment from the agencies. The draft class specification is attached.
3. The lawyer positions which have responsibility for the administration of legal services within a Department will be reviewed to establish a Legal Administrator series.
4. A committee of lawyers in State government, in conjunction with the Classification Bureau, will review the current lawyer series and classification of lawyers.

Representative John Scully
August 3, 1978
Page 2

We believe these actions will contribute to the committee's attempt to supply effective legal services to State agencies.

Sincerely,

William S. Gosnell, Administrator
Personnel Division

WSG/MPE/dh

Attachments

cc: Committee Members



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS
SPECIFICATIONS

CLASS CODE

110001

GRADE

1

LAST UPDATED

3-14-70

OCCUPATIONAL
GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Lawyer 1

DESCRIPTION OF WORK

GENERAL DUTIES: Performs entry level professional legal work.

SUPERVISION RECEIVED: Works under close supervision of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over clerical personnel.

EXAMPLE OF DUTIES

Conducts legal research into issues and problems and prepares reports on findings; makes investigations to determine statutory compliance; confers with and advises legislators, state agencies, private citizens and organizations on legal administrative matters; may staff legislative committees; may draft proposed legislation resolutions, procedures, rules and regulations; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Working knowledge of state and federal laws; the principles, procedures and methods of legal research.

SPECIAL SKILLS: None.

ABILITIES: Ability to analyze legal documents and instruments; to prepare opinions and draft legal documents, to establish and maintain effective relationships with others; to communicate effectively verbally and in writing.

EDUCATION: A Doctor of Juris Prudence from an accredited college or university.

EXPERIENCE: None.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements and be licensed to practice law in the State of Montana within fourteen months after date of hire.

USER AGENCIES	All						As Noted Below			All Except Those Noted Below		
	3103	3107	3501	5706	5801	6404	6601					

NOTE: Duties described above are not necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE

110002

GRADE

15

LAST UPDATED

3-14-75

OCCUPATIONAL
GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Lawyer II

DESCRIPTION OF WORK

GENERAL DUTIES: Performs professional legal work of average difficulty.

SUPERVISION RECEIVED: Works under general supervision or an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over clerical personnel as assigned.

EXAMPLE OF DUTIES

Conducts legal research into specialized issues and problems and prepares reports on findings; confers with and advises legislators, state agencies, private citizens, and organizations on legal administrative matters; conducts hearings and prepared findings and recommendations; prepares and presents agency cases at hearings, trials, and other legal proceedings; drafts proposed legislation, resolutions, procedures, rules and regulations, documents, such as contracts and leases; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Considerable knowledge of state and federal laws, of the principles, procedures and methods of legal research, or judicial procedures; the legislative process.

SPECIAL SKILLS: None.

ABILITIES: Ability to analyze legal documents and instruments; to prepare opinions and draft legal documents; to establish and maintain effective relationships with others; to communicate effectively verbally and in writing; to advocate agency positions in routine legal proceedings.

EDUCATION: A Doctor of Juris Prudence from an accredited college or university.

EXPERIENCE: One and one-half years of professional experience in the practice of law including fulltime summer legal intern experience.

OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All										As Noted Below	All Except Those Noted Below			
	3101	3107	4201	5201	5301	5401	5501	5603	5801	6101		6405	6401	6827	
	6901														

NOTE: Duties described above are not necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE 110011
GRADE 19
LAST UPDATED 3-14-75

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Lawyer IV

DESCRIPTION OF WORK

GENERAL DUTIES: Performs administrative, supervisory and professional legal work in representing the agency in its legal proceedings.

SUPERVISION RECEIVED: Works under general guidance and direction of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over clerical, legal, and other agency or non-agency personnel.

EXAMPLE OF DUTIES

Responsible for the preparation, evaluation, interpretation of legislation, regulations and laws affecting the agency; assists the agency head and other agency supervisors in legal matters; coordinates, supervises and evaluates legal personnel; presents legal evidence in legal proceedings before hearings, boards and courts; develops, plans and implements procedures and training programs; carries out agency policies and goals; analyzes budget expenditures and needs; coordinates the agency's function with other agencies and private groups; establishes functional priorities and goals; may serve on committees or boards for the agency; performs related work as required, and may in addition perform legal duties of a Lawyer III.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Extensive knowledge of the laws, statutes, and regulations affecting the agency; considerable knowledge of the principles and practices of management and agency functions; all required knowledges for a Lawyer III.

SPECIAL SKILLS: None.

ABILITIES: Ability to communicate effectively verbally and in writing; to supervise effectively; to establish and maintain effective relationships with employees, other agencies and the public; other abilities of a Lawyer III.

EDUCATION: A Doctor of Juris Prudence from an accredited college or university.

EXPERIENCE: Six years of progressively responsible supervisory and administrative professional legal experience.

OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All	*	As Noted Below	All Except Those Noted Below
	5401			

NOTE: Duties described above are not necessarily all inclusive for this class.



CLASS
SPECIFICATIONS

CLASS CODE 110004
GRADE 16
LAST UPDATED 7-1-74

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Administrator, Legal Division-Public Service Regulations

DESCRIPTION OF WORK

GENERAL DUTIES: Performs administrative, supervisory and professional duties representing and assisting the department in legal matters.

SUPERVISION RECEIVED: Works under general supervision of the Commissioners of the Public Service Commission.

SUPERVISION EXERCISED: Exercises supervision over division personnel as assigned.

EXAMPLE OF DUTIES

Responsible for the preparation, evaluation, interpretation of legislation, regulations and laws affecting the department; assists the commission and other departmental supervisors in legal matters; coordinates, supervises and evaluates legal personnel; presents legal evidence in legal proceedings before hearings, boards and courts; develops, plans and implements procedures and training programs; carries out departmental policies and goals; analyzes budget expenditures and needs; coordinates the division's function with other agencies and private groups; establishes functional priorities and goals; may serve on committees or boards for the director; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Thorough knowledge of the laws, statutes, and regulations affecting the department; considerable knowledge of the principles and practices of management, departmental functions.

SKILLS: None.

ABILITIES: Ability to communicate effectively verbally and in writing; to supervise effectively; to establish and maintain effective relationships with employees, other agencies and the public; to prepare orderly and concise legal evidence.

EDUCATION: Graduation from an accredited college or university with a degree in Law.

EXPERIENCE: Two years of progressively responsible supervisory and administrative legal experience,

OR

any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Must meet necessary licensing requirements.

USER AGENCIES	All	* As Noted Below	All Except Those Noted Below
	4201		

NOTE: Duties described above are not necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE ▶ 110008
GRADE ▶ 18 16
LAST UPDATED ▶ 7-1-74

OCCUPATIONAL
GROUP

Lawyers

MONTANA CLASSIFICATION TITLE ▶

Manager, Legal Unit, ADMINISTRATIVE, LEGAL DIVISION

DESCRIPTION OF WORK

GENERAL DUTIES: Performs all types of legal services for the State Department and Board of Health and Environmental Sciences with respect to federal and state laws and regulations relating to public health and environmental matters.

SUPERVISION RECEIVED: Works under general guidance and direction of administrative superior.

SUPERVISION EXERCISED: Exercises supervision over professional and clerical personnel.

EXAMPLE OF DUTIES

Acts as senior counsel for legal unit; acts as Special Assistant Attorney General; directs activities on preparation and conduct of trial work before courts of the state, federal district court and proceedings before the Department and Board; consults with and renders advice and opinions for director, department staff and the board; conducts public hearings before Department and prepares findings and decisions; drafts and reviews legislation; drafts and reviews rules for Montana Administrative code; prepares legal pleadings, briefs, contracts and other legal documents; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Thorough knowledge of use of Revised Codes of Montana, Administrative Code, federal statutes and regulations, and case book law.

SKILLS: None.

ABILITIES: Ability to communicate legal matters effectively verbally and in writing; to supervise effectively; establish and maintain effective working relationships with employees, other agencies and the public.

EDUCATION: Graduation from or accredited school of law.

EXPERIENCE: Five years of general law practice experience. Or any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All	* As Noted Below	All Except Those Noted Below
	5301		



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE 110009
GRADE 18
LAST UPDATED 7-1-74

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

ATTORNEY AT LAW - LEGAL ADVISOR
Chief, Legal Bureau - Rev

DESCRIPTION OF WORK

GENERAL DUTIES: Performs administrative, supervisory and professional work in the representing of the Department's legal proceedings.

SUPERVISION RECEIVED: Works under general guidance and direction of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over bureau personnel.

EXAMPLE OF DUTIES

Responsible for the preparation, evaluation, interpretation of legislation, regulations and laws affecting the department; assist the Director and other departmental supervisors in legal matters; coordinates, supervises and evaluates legal personnel; presents legal evidence in legal proceedings before hearings boards and courts; develops, plans and implements procedures and training programs; carries out departmental policies and goals; analyzes budget expenditures and needs; coordinates the bureau's function with other agencies and private groups; establishes functional priorities and goals; may serve on committees or boards for the Director; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Thorough knowledge of the laws, statutes, and regulations affecting the department; considerable knowledge of the principles and practices of management, departmental functions.

SKILLS: None.

ABILITIES: Ability to communicate effectively verbally and in writing; to supervise effectively; to establish and maintain effective relationships with employees, other agencies and the public; to prepare orderly and concise legal evidence.

EDUCATION: Graduation from an accredited college or university with a law degree.

EXPERIENCE: Six years of progressively responsible supervisory and administrative legal experience.

OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All	* As Noted Below	All Except Those Noted Below
	5801		

NOTE: Duties described above are not necessarily all inclusive for this class.

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

OCCUPATIONAL
GROUP

LAWYERS

CLASS

6020

1010

SPECIFICATIONS

EDUCATION - 5706
EXPERIENCE - 975

MONTANA CLASSIFICATION TITLE

Manager, Legal Unit - Natural Resources & Conservation

DESCRIPTION OF WORK

GENERAL DUTIES: Perform administrative, advocacy and professional legal duties for the Department of Natural Resources & Conservation.

SUPERVISION RECEIVED: Works under broad policy guidance and direction of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over professional and clerical personnel.

EXAMPLE OF DUTIES

Provides legal opinions and advises contract preparation and review, litigation, bill drafting and document review for the department; conducts research and analyzes or coordinates compilation of all data necessary for adequate legal proceedings relating to water law or natural resource law administered by the department; represents the department on all legal matters to state, federal and local government agencies; performs duties of trial attorney and hearing officer; assigns and directs work of staff attorneys or retained counsel; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Thorough knowledge of the revised codes of Montana, administrative code, federal statutes and regulations; some knowledge of supervisory practices.

SKILLS: None

ABILITIES: Ability to communicate legal matters effectively verbally and in writing; to supervise effectively; establish and maintain effective working relationship with employees, other agencies and the public.

EDUCATION: Graduation from an accredited school of law.

EXPERIENCE: Four years of increasingly responsible experience related to natural resources and administrative law.

OR

Any equivalent combination of education and experience.

USEP
AGENCIES

5706

As Noted Below

Except Those Noted Below

NOTE: This descriptive sheet

is not all inclusive for this class



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE	► 110006
GRADE	► 19
LAST UPDATED	► 3-14-75

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Assistant Administrator, Legal Divisions-Highways

DESCRIPTION OF WORK

GENERAL DUTIES: Assists in the administration and supervision of the legal division.

SUPERVISION RECEIVED: Works under general guidance and direction of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over professional personnel.

EXAMPLE OF DUTIES

Assists in developing, planning and implementing procedures assigning work to staff lawyers; carrying out departmental goals and policies; directs activities of staff pertaining to condemnation actions and land acquisition; does abstract and title reviews and all other legal work for Right-of-Way Bureau; provides legal advice to various divisions; assumes responsibility of administrator during his absence; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Thorough knowledge of the laws, statutes and regulations affecting the department and right-of-way actions. Considerable knowledge of the principles and practices of management and departmental functions.

SPECIAL SKILLS: None.

ABILITIES: Ability to communicate effectively verbally and in writing; to supervise effectively; to establish and maintain effective working relationships with employees, other agencies and the public; to prepare orderly and concise legal documents.

EDUCATION: Graduation from an accredited college or university with a law degree.

EXPERIENCE: Six years of progressively responsible supervisory and administrative legal experience.

OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All	*	As Noted Below	All Except Those Noted Below
	5401			

NOTE: Duties described above are not necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE	110007
GRADE	19
LAST UPDATED	7-1-74

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Assistant Administrator

WPA
Workmen's Compensation Division

DESCRIPTION OF WORK

GENERAL DUTIES: Performs complex administrative and legal duties in assisting the administrator in the general administration of the Workmen's Compensation Division.

SUPERVISION RECEIVED: Works under general guidance and direction of administrative superior.

SUPERVISION EXERCISED: Exercises supervision over division personnel directly or through subordinate supervisors.

EXAMPLE OF DUTIES

Assists administrator in general administration of division; advises administrator and bureau chiefs on legal matters; coordinates the defense for contested cases; performs collection work on delinquent accounts; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Extensive knowledge of law; thorough knowledge of administrative principals.

SKILLS: None

ABILITIES: Ability to establish and maintain effective working relationships with employees, other agencies and the public; follow written and verbal instructions; communicate effectively verbally and in writing; supervise efforts of others.

EDUCATION: Graduation from a college or university with a degree in law.

EXPERIENCE: Four years progressively responsible experience in the practice of law.

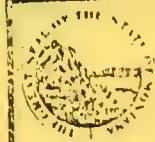
OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES	All	*	As Noted Below	All Except Those Noted Below
	6603			

NOTE: Duties described above are necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS SPECIFICATIONS

CLASS CODE 110005
GRADE 20
LAST UPDATED 3-14-75

OCCUPATIONAL GROUP

Lawyers

MONTANA CLASSIFICATION TITLE

Administrator, Legal Division - Highway

DESCRIPTION OF WORK

GENERAL DUTIES: Performs administrative, supervisory and professional work in the representing of the Department's legal proceedings.

SUPERVISION RECEIVED: Works under general guidance and direction of an administrative superior.

SUPERVISION EXERCISED: Exercises supervision over division personnel directly or through subordinate supervisors.

EXAMPLE OF DUTIES

Responsible for the preparation, evaluation, and interpretation of legislation, regulations and laws affecting the department; assists the director and other departmental supervisors in legal matters; coordinates, supervises and evaluates legal personnel; presents legal evidence in legal proceedings before hearings, boards and courts; develops, plans and implements procedures and training programs; carries out departmental policies and goals; analyzes budget expenditures and needs; coordinates the division's function with other agencies and private groups; establishes functional priorities and goals; may serve on committees or boards for the Director; performs related work as required.

MINIMUM QUALIFICATIONS

KNOWLEDGES: Extensive knowledge of the laws, statutes, and regulations affecting the department and right-of-way actions. Considerable knowledge of the principles and practices of management, departmental functions.

SPECIAL SKILLS: None.

ABILITIES: Ability to communicate effectively verbally and in writing; to supervise effectively; to establish and maintain effective relationships with employees, other agencies, and the public; to prepare orderly and concise legal evidence.

EDUCATION: Graduation from an accredited college or university with a law degree.

EXPERIENCE: Six years of progressively responsible supervisory and administrative legal experience.

OR

Any equivalent combination of education and experience.

NECESSARY SPECIAL REQUIREMENTS: Ability to meet special requirements.

USER AGENCIES

5401

All

* As Noted Below

All Except Those Noted Below

NOTE: Duties described above are not necessarily all inclusive for this class.



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

CLASS
SPECIFICATION

CLASS CODE: 119004

UPDATED: 8/78

LEGAL ASSISTANT

SUMMARY OF WORK:

Under close supervision performs research, investigative and administrative work in assisting attorneys in various legal and administrative activities. May exercise supervision over clerical and secretarial personnel.

ILLUSTRATIVE EXAMPLES OF WORK:

Researches and analyzes sources such as statutes, judicial decisions, articles, depositions, treaties, legal codes, land titles and abstracts and regulations; prepare abstracts and reports of research findings; compiles citations and references.

Prepares legal and administrative documents such as briefs, opinions, appeals, contracts, deeds, motions, legislation, rules and procedures for review, approval and use by attorneys and administrative officials; explains previously interpreted laws, rules and regulations to others.

Conducts investigations and gathers facts and other data for preparation of cases; assembles exhibits, affidavits and other documents; checks citations, quotations, footnotes and references for accuracy;

Arranges interviews and depositions and may conduct, record or summarize interviews; delivers or directs delivery of subpoenas to witnesses and parties to action; files pleadings with court clerk; may coordinate and direct activities of office staff; performs related work as required.

REQUIREMENTS:

KNOWLEDGES: Working knowledge of research methods and techniques. Some knowledge of the preparation and use of legal documents; administrative and court procedures; relevant laws; office practices and procedures.

ABILITIES: Ability to draft legal documents; to conduct research; to communicate effectively verbally and in writing; to establish and maintain effective working relationships with employees, other agencies and the public; to follow oral and written instructions.

The above knowledges and abilities are typically acquired through a combination of education and experience equivalent to a Bachelor's degree with course work in Business, Economics, Political Science, law or related field or three years of progressively responsible experience which demonstrates the ability to perform research and to analyze, explain and apply rules, regulations, procedures, policies and precedents. This experience may have been gained in an administrative, investigative, technical, high level clerical or other responsible work.

DRAFT



Memorandum

TO: Department Directors

FROM: M. P. Estenson, Chief
Classification and Pay Bureau

MPE Estenson

DATE: May 19, 1978

SUBJECT: Classification of Lawyers

As a result of some concerns raised by members of the Interim Committee on State Legal Services and Election Laws, I would appreciate your comments and observations on the following issues which relate to the career opportunities for lawyers in State government.

1. Are the current minimum qualifications for the Lawyer III class specification accurate?

Comment: There appears to be a significant turnover of lawyers who have from two to five years of service with the state. One observation is that the current requirement of five years of experience may be excessive for the work performed by a Lawyer III. I would appreciate your comments or suggestions as to the appropriateness of the current minimum qualifications for this class specification.

2. The members of the Committee have suggested that a class specification of paralegal be established.

Comment: It was felt that this classification might be used in some legal functions to eliminate the current work load of lawyers. Do you feel this class should be established, what duties would be assigned, and what education and experience would be required?

3. There should be more flexibility in the current pay plan.

Comment: It was felt by some of the members of the Committee that if there were more flexibility for Department Directors to make use of the thirteen steps we would be more likely to retain competent legal staff. Do you think there should be more flexibility in the pay plan rules? If so, under what conditions should flexibility be granted; to provide merit increases, to retain good employees, etc.?

Department Directors

May 19, 1978

Page 2

Obviously, there are some aspects of the turnover problem which are not unique to lawyers and are reflected in other occupations. If any changes are implemented to the current classification and pay plans, they should apply to all employees which are in a similar situation.

I would appreciate your comments on the above issues.

MPE/dh

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

MEMBERS OF THE BOARD - CHAIRMAN ELLIC WELDING - VIOLA KERAF - DAVID G. DRUM
DR. WILSON F. CLARK, DR. ROY E. HUFFMAN, WILLIAM H. BERTSCHE, CHARLES L. HASH

DNRC
Ted J. Doney, Director

July 17, 1978

MEMORANDUM

RECEIVED

JUL 18 1978

TO: M. P. Estenson, Chief
Classification and Pay Bureau

FROM: Richard T. Munger, Deputy Director

RE: Classification of Lawyers

RTM
STATE PERSONNEL
DIVISION

Attached is a copy of a memorandum issued by Don MacIntyre, the Department's Chief Legal Counsel, addressing the issues outlined in your memorandum dated May 19, 1978.

Ted Doney, Department Director, and I concur in Mr. MacIntyre's comments.

RTM/nj
Enclosure

MEMORANDUM

TO: Rich Munger
Deputy Director

FROM: Donald D. MacIntyre *DM*
Chief Legal Counsel

RE: Classification of Lawyers

DATE: June 23, 1978

On May 19, 1978 Mr. M. P. Estenson, Chief of the Classification and Pay Bureau, requested comments concerning career opportunities for lawyers in state government. As per your request I submit the following comments for transmittal to Mr. Estenson.

1. Are the current minimum qualifications for Lawyer III class specifications accurate?

The current Lawyer III classification specification are clearly excessive and meaningless. The fact is that many agencies avoid the classification system either through artificial classifications or through legislative directive.

A lawyer in state government is exactly that: a state government attorney. Whether a lawyer is employed by the Governor, the Attorney General, the Legislative Council, the Department of Natural Resources and Conservation or any other governmental entity, the lawyer should be put on an equal footing with all other government lawyers, if there is to be a classification system. If an attorney is hired to perform for the state in the capacity of an attorney, it should make no difference which agency or governmental entity employs the attorney.

Attorneys by the nature of their occupation are competitive. It is disheartening, and destructive to the productivity of state legal work, to allow an attorney who is less qualified or is equally qualified (in terms of the artificial standards set up in the classification plan) to be compensated at a higher rate than another attorney simply because certain state attorneys fall within the classification scheme and others do not. Until such time as there is a uniform classification scheme applicable to all state attorneys, no system will work adequately.

Another observation I should make is that the present system does not achieve the goal that must be attained if

Montana is to have an excellent staff of state government attorneys. The goal is to establish a competitive career ladder for government attorneys. The present system is wholly inadequate. The fact that a Lawyer III slot has been created, whether 3 years or 5 years of experience is required, does not provide a career ladder. As an example the following scenario is provided: Agency X has a legal staff consisting of 4 attorneys. Agency X classifies the attorneys as follows: Lawyer IV, Lawyer III, Lawyer II, and Lawyer I. The individual classified as a Lawyer II qualifies for Lawyer III classification. Agency X refuses to upgrade Lawyer II to Lawyer III because of budgetary constraints or one of a number of other bureaucratic upgrading problems. The individual must either remain in the Lawyer II slot hoping against hope that the Lawyer III (who may or may not qualify for an upgrade) will either terminate or die, or look for a job elsewhere. Such a system does not create a career ladder.

The question that must be addressed is not whether the current minimum qualifications for the Lawyer III classification are accurate, but what career orientated classification system can be developed for lawyers in state government. A career ladder should not be agency orientated, it should be based on a state government classification system. The agency should not provide the sole means by which an attorney can advance. The state classification must provide that a qualified attorney in any agency shall be upgraded upon the attorney achieving the necessary qualifications. An agency can not be allowed to take the position that it has only X attorney slots and that the slots are rigidly classified, e.g. three attorney slots, classified as 1 Lawyer IV, 1 Lawyer III and 1 Lawyer II. If all three attorneys are qualified, all three should be classified as Lawyer IV. Any distinction as to supervisory control can be accommodated in the step increases provided within the particular grade.

2. Establishment of a class specification for paralegal. The establishment of the class specification for paralegal should assist many agencies in the performance of its routine legal functions. However, a paralegal can not be seen as a substitute for an attorney. A paralegal is someone who assists the attorney, he does not replace the attorney. An attorney is a uniquely educated and specially trained individual. He can not practice his profession without a certification from the state. He can be barred from the practice of law. His education does not stop when he receives his law degree, he must keep abreast of the ever changing and complex legal issues of his time. With the possible exception of the medical profession, no profession is more zealously trained, educated, supervised or scrutinized.

I doubt very much that a patient with a heart condition would allow a para-medic to perform open heart surgery on him when he can be treated by a medical doctor specializing in open heart surgery. Likewise, the State of Montana should demand the services of highly qualified and specialized attorneys rather than accept the services of paralegals as a more "economical" substitute. Like the nurse in the operating room, the paralegal must be used as a valuable aid rather than a substitute for the surgeon.

Although the establishment of a paralegal classification could be beneficial, it in no way solves the problem of establishing career opportunities for lawyers.

3. There should be more flexibility in the current pay plan. To use an often quoted phrase, "anything is better than nothing." Yet, the fact of the matter is that the steps are not at all adequate. To "play" with the steps does not assure the lawyer of any career with state government, it serves only to increase the lawyers "training" with the state for a period of one or two more years. This creates a greater problem than presently exists. Lawyers may "hang on" with the state 4-7 years instead of 2-5 years by making use of the steps, however, when they terminate they will be replaced by recent graduates. What has been accomplished by replacing a lawyer with seven years experience with a recent graduate instead of replacing a lawyer with two years experience? If instead a career ladder was established for state attorneys there would be no need to "start all over retraining attorneys." New attorneys could be worked into the system in a more orderly and scheduled manner.

Finally, a comment on the statement in Mr. Estenson's memorandum is appropriate. It is stated, "If any changes are implemented to the current classification and pay plans, they should apply to all employees which are in a similar situation." I agree totally! But who are the employees that are in a similar situation? What professional group offers the unique specialized services that are demanded of the attorney? Certainly, the medical profession. Are attorneys in state government classified comparably to the doctors in state government? Let's be frank. Look at the market outside state government. Compare the price required to retain legal counsel with other professions. Using that analysis as a basis, how does the pay offered to state government attorneys compare with that offered to other state government employees. Although both are probably underpaid in the government sector, the comparison fails.

In conclusion let me state that I would favor an overall reclassification of all state employees. However, because of my own personal interests, I am very concerned that the legal profession be upgraded in state government. This can only be achieved by a uniform career ladder for all lawyers in state government.



STATE OF MONTANA

DEPARTMENT OF STATE LANDS

MAILING ADDRESS: CAPITOL STATION
OFFICE: 1625 11TH AVENUE

HELENA 59601

(406) 449

STATE BOARD OF
LAND COMMISSIONERS

THOMAS L. JUDGE
GOVERNOR

GEORGIA RICE
SUPT. OF PUBLIC INSTRUCTION

FRANK MURRAY
SECRETARY OF STATE

MIKE GREELEY
ATTORNEY GENERAL

E V. SONNY OMHOLT
AUDITOR

LEO BERRY, JR.
COMMISSIONER

SCHOOL LANDS

MINING

RECLAMATION

June 28, 1978

Mr. M. P. Estenson, Chief
Classification and Pay Bureau
Department of Administration
Capitol Station
Helena, MT 59601

Re: Classification of Lawyers

Dear Mr. Estenson:

I wish to take this opportunity to comment on your memorandum of May 19, 1978. I am also concerned about the turnover of lawyers in state government. In order for the state of Montana to adequately represent itself, it must retain experienced counsel. It is much more efficient and economical to keep experienced counsel on staff than to retain experienced attorneys on a contract basis.

The large time span in which no advancement is possible between the Lawyer II and Lawyer III position is responsible for a great deal of turnover. If the experience requirements for a Lawyer III classification were lowered, attorneys who were interested in government practice would be encouraged to stay with the state rather than leaving for a more lucrative private practice. The period involving two to three years' experience is critical; this is the point at which many attorneys are leaving state government. Career opportunities should also be opened beyond the Lawyer III classification.

A paralegal classification may be a good idea. There are many tasks that such a person could perform if properly trained. I would suggest that the education and experience standards be set high. Such a position would be of little value unless the lawyers could rely on the paralegal's abilities without having to double-check all of the work product.

I believe that more flexibility in the use of the thirteen steps would make it easier to retain a competent legal and other professional staff. A department head should have the flexibility to retain good employees. This should apply to all employees, not just the legal staff.

Thank you for the opportunity to comment.

Sincerely,

Leo Berry, Jr., Commissioner
Department of State Lands

RECEIVED

JUN 28 1978

STATE PERSONNEL
DIVISION



THOMAS L. JUDGE
GOVERNOR

THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE

1300 BLOCK CEDAR STREET
AIRPORT WAY BUILDING WEST
HARRISBURG, PENNSYLVANIA 17110

TELEPHONE:
AREA CODE 406
449-3144

W. GORDON McOMBER
DIRECTOR

RECEIVED

June 26, 1978

JUN 27 1978

TO: M. P. ESTENSON, CHIEF
Classification and Pay Bureau

FROM: W. Gordon McOmber, Director
Department of Agriculture

SUBJECT: Classification of Lawyers

STATE PERSONNEL
DIVISION

Your memorandum of May 19, 1978, was concerned with three questions raised by members of the Interim Committee on State Legal Service and Election Laws. Following are comments on those issues from a Departmental viewpoint.

1. Are the current minimum qualifications for the Lawyer III class specifications accurate?

The class specification as written seems correct for the work done by the Lawyer III position. Five years experience does not necessarily seem excessive for the duties performed. Turn-over of lawyers who have two to five years experience with the State seems to indicate that the private sector offers greater opportunities to an individual with such experience.

Law school graduates with little or no experience may be turning towards State service to gain experience. Once that objective is reached they seek out the most lucrative opportunities. For an aggressive individual that means a move to the private sector.

2. The members of the Committee have suggested that a class specification of paralegal be established.

It seems the purpose of establishing a new class specification, such as paralegal, is to lighten the load of the lawyers. This possibly could be accomplished with positions currently classified. Research work and related tasks might be performed by Legal Secretaries, Administrative Assistants, and Aides. This would preclude the necessity of a new class specification and would expand the functions of already established classes.

Estenson
June 26, 1978

If a paralegal were available there may also be a danger of an agency having a tendency to use the position as a lawyer. This also could lead to serious consequences as decisions could be based on improper counselling due to lack of legal training.

3. There should be more flexibility in the current pay plan.

The ability to retain competent legal staff could be greatly enhanced if more flexibility were afforded the Department Directors in the use of the pay plan's thirteen steps. The privilege of flexibility should be limited to the Director's discretion. Justification for the use of pay plan flexibility probably should be related to performance criteria. In this manner a Director could reward competent efforts and enhance the Department's ability to attract and retain skilled staff.

This would be an advantagous personnel tool not only for legal staff but for all positions.

Department of Labor and Industry



449-2621

Helena, 59601

RECEIVED
JUN 26 1978
STATE PERSONNEL
DIVISION

THOMAS L. JUDGE
GOVERNOR OF MONTANA

DAVID E. FULLER
COMMISSIONER

June 22, 1978

MEMORANDUM

TO: M. P. Estenson
FROM: Dave Fuller
RE: Classification of Lawyers

In response to your questions set forth in your memorandum of May 19, I am pleased to provide you with the following comments and observations.

1. The requirement of five years is excessive for the work performed by a Lawyer III. Rather than "years of experience," I would think that "types of experience" might be explored as a more accurate gauge, i.e. must have tried at least ten contested cases in courts of record in the past two years.
2. Although there was some support among my key staff for the paralegal concept, generally, it was opposed as being inappropriate at this time. In our judgment, the problem of routine legal and legal-related work is currently being handled by administrative assistants, administrative secretaries, investigators, fact finders, etc. It would seem more appropriate perhaps to look more closely at those individuals that might be misclassified because they are doing legal-related work. However, to move to the paralegal concept at this time does not seem to be appropriate. I should add, however, paralegals may be appropriate in those Departments with large central legal units where the benefits of a paralegal could be utilized. I am told that in the private sector the paralegal concept works in this kind of a situation.
3. As you may know, I have often been a strong advocate of flexibility in the pay plan. I do, therefore, feel increased flexibility in regard to lawyers could perhaps improve the retention rate of experienced attorneys. The more flexibility a Department can have and follow the broad guidelines of your office, in my judgment, would improve the situation.

Thank you for the opportunity to comment on these issues.

JUN 23 1978

MEMORANDUM

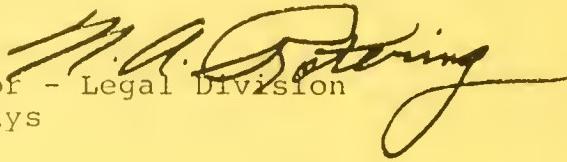
STATE PERSONNEL
DIVISION

TO: M. P. Estenson, Chief
Classification and Pay Bureau

FROM: N. A. Rotering, Administrator - Legal Division
Montana Department of Highways

DATE: June 22, 1978

SUBJECT: Classification of Lawyers



In answer to your Memorandum of May 19, 1978, I wish to comment that the present requirement of five years of state service to qualify as a Lawyer III is excessive and does result in rapid turnover of state lawyers.

As to a paralegal class, it would be appropriate and after one year of law school, we would assign such class the duty of assisting in the preparation of condemnation cases including the drafting of requisite pleadings.

Your third subject concerns flexibility of state lawyers in the current pay plan. In order to fully utilize state legal talent, it would be well to exempt state lawyers entirely from the pay plan as is done in the case of the state medical profession. This would enable the state to maintain competitive positions and retain trained and efficient legal talent. There are no other state employees under the pay plan that you can reasonably compare to the legal profession.

If the state lawyers are to continue under the classification and pay plan, then the present rules should be greatly relaxed in order to empower Department directors to give merit increases in deserving cases and to use the thirteen steps to the end that trained lawyers do not leave state employment.

NAR:jkg



STATE OF MONTANA

DEPARTMENT OF REVENUE

MICHELL BUILDING

HELENA, MONTANA 59601

June 8, 1978

RECEIVED
JUN 13 1978
STATE PERSONNEL
DIVISION

MEMORANDUM

TO: M. P. Estenson, Chief
Classification and Pay Bureau
Department of Administration

FROM: Raymond E. Dore, Director *(Signature)*
Department of Revenue

As per your memorandum dated May 19, 1978, I submit the following comments relative to the classification of lawyers in state government:

1. Are the current minimum qualifications for the Lawyer III class specification accurate?

Comment: The current minimum qualifications for the Lawyer III class specifications are not accurate. Specifically, the experience requirement, or service requirement with the state should be a minimum of three years. Quite clearly the Department of Revenue will be able to discern at the end of three years whether one of its attorneys qualifies qualitatively for the position of Lawyer III. This conclusion results from the amount of work required of the attorneys, the type of work required of the attorneys, the contacts, the responsibilities, in other words the total fabric of an attorney's responsibilities within the Department of Revenue Legal Division. In addition, I believe the three year period to be sufficient in conjunction with the other suggested changes in the following comments.

June 8, 1978

2. The members of the committee have suggested that a class specification of paralegal be established.

Comment: From the standpoint of the Legal Division of the Department of Revenue I believe that this classification is an absolute must. We have substantial amounts of work which could be done by a paralegal thus freeing the attorneys to not only be of more service to the operating tax divisions but in some cases be able to give a better quality of service. The individual paralegal could prepare and participate in pleadings, research, opinions, minor motions, quiet titles, foreclosures, bankruptcies, legislation drafting, and numerous other matters involving both administrative and legal duties. In short there would be no question that the individual's time would be well spent. I believe that the equivalent of one or two years of college education and approximately one or two years of experience would be necessary. The college education and experience need not be in that particular field, i.e., the legal field, but must, however, have some relationship to the administrative duties required in the paralegal position.

3. There should be more flexibility in the current pay plan.

Comment: Flexibility in the pay plan by the use of the thirteen steps would be very helpful to the department directors. I believe that sufficient standards could be devised to allow the department director to utilize the various steps within grade, based on performance and determined by objective standards. Providing this flexibility for the purposes of merit increases will, I believe, naturally tend to retain good employees within career positions. While I am addressing the step flexibility within grades to the retention of legal staff, I believe it should apply equally to the other department divisions. Such flexibility is necessary in recognizing particular capabilities of the various department employees. Clearly, some of the differences in capabilities must be rewarded.

Should you wish to discuss the above, please contact me at your convenience.

RED:cm



DEPARTMENT OF ADMINISTRATION

*Memorandum*THOMAS L. JUDGE
GOVERNOR

TO: Pat Estensen, Chief
Classification Bureau
Personnel Division

FROM: Jack C. Crosser, *JCC*
Director

DATE: May 26, 1978

SUBJECT: Classification of Lawyers

In response to your recent memorandum, I am enclosing a copy of a memorandum from Mr. Young. I concur with his comments on the subject matter.

JCC/emw
Attachment

Memoirandum

TO: Jack C. Messer, Director
Department of Administration

FROM: Michael Young, Administrator
Insurance & Legal Division

DATE: May 21, 1978

SUBJECT: Classification of Lawyers



In response to Pat Euston's memo I have the following comments:

The minimum qualifications for the Lawyer III specifications clearly exceed those held by 85% of the attorneys working for the government including most of the legal division administrators and all of the assistant attorneys general.

Such details would be useful in large legal divisions and may appear in this office in due time. The problem is no one has the capability as a paralegal, and I suggest a similar situation could arise as when secretarial positions become administrative in nature or classed as "Executive Assistants."

Such flexibility would be valuable in keeping people longer than the usual three to four years. Merit steps should be given to staff attorneys by the division administrators and to division administrators by the Director and his staff. Numerous subjective and objective criteria are available to judge merit. Although subjective criteria may subject to criticism it certainly can't be denied by the public sector because it is the sole basis for selection and merit in the private sector.

On a personal comment on the subject it is my observation that one important factor causing high turnover is the availability of outside counsel for trial work. Many state attorneys leave law work but for various reasons their agencies encourage them to get into the courtroom and, thus gain both experience and a sense of professional development in their

opinion. Another cause of excessive turnover is the fact that the majority of lawyers in the same classification are equally qualified for promotion. It is tenor points out is certainly not unique to this office but applies almost equally the board in state government and is partially eliminated by negotiating steps in the classification.

A major bone of contention among classified career-oriented state lawyers is the obvious inequality in pay when compared to the attorneys employed by the Highway Department, the Commissioner of Higher Education, and the legislative Branch. Several staff positions in the Highway Legal Division, for example, are graded significantly higher than all other division administrators. Also, the weighting of the pay plan matrix against all employees grade 14 and above is causing nearly as much of a problem in the lawyer series as the specific problems being addressed by the legal services committee. However, it is my personal feeling that special consideration of these general pay plan problems to lawyers exclusively would be unfair to other comparable management personnel.

If you have any questions please contact me.

mb

STATE ARSENAL
P. O. BOX 4789

DEPARTMENT OF MILITARY AFFAIRS
STATE OF MONTANA
OFFICE OF THE ADJUTANT GENERAL

AREA CODE 406

449-3692
449-2778

HELENA, MONTANA 59601

NO-AAG

24 May 1978

Mr. H. P. Estenson, Chief
Classification and Pay Bureau
Department of Administration
State Capitol Building
Helena, MT 59601

RECEIVED MAY 24 1978

RECORDED

Dear Mr. Estenson:

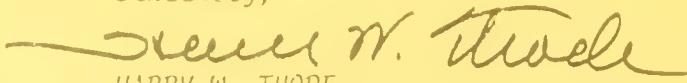
Reference is made to your memorandum regarding classification of lawyers in state government.

The Department of Military Affairs does not and has not employed staff lawyers. Our legal affairs are primarily handled by the State Attorney General. Some assistance is provided by National Guard members who are lawyers. This support is provided during National Guard training assemblies. As a result, we do not feel qualified by experience to reply to questions 1 and 2.

As to question 3 regarding flexibility in the current pay plan we feel that expanded flexibility can only lead to the eventual degradation of pay. The number of exceptions already made has made it difficult to train the pay plan to employees and to assure them that it provides equal pay for equal work. Additional provisions that result in more exceptions will complicate the plan to the extent that eventually employees lose faith in it and feel that is no pay plan at all. It may not be the exceptions themselves that would cause this reaction, but the varying application of the exceptions.

It might perhaps be better to establish a separate plan and pay scale for professionals.

Sincerely,


HARRY W. THODE
Brig. Gen., AGC, MT ARNG
Assistant Adjutant General

SURVEY OF DEPARTMENTS

	N.R. & C	LANDS	AGRICULTURE	LABOR & INDUSTRY
1. Are the current minimum qualifications for Lawyer III accurate?	Expand the career ladder. Make it uniform in all agencies.	Reduce the minimum qualifications to retain lawyers.	Minimum qualifications are adequate.	Five years is excessive, emphasis type of experience.
2. Should a Paralegal class specification be established?	Paralegal should be established but not to replace lawyers.	Establish paralegal with high education and experience requirements.	No need for paralegal. Work can be performed by current classes.	Paralegal is inappropriate at this time, but maybe appropriate in agencies with large legal staff. Use current classes in the system.
3. Should there be more flexibility in the pay plan?	Establish more flexibility within grade.	Establish more flexibility for lawyers and other classes, to retain competent employees.	More flexibility in pay plan at the Directors discretion based on performance for lawyers and other classes to retain competent employees.	More flexibility within guidelines established by the Personnel Division to retain lawyers.
Comments	Emphasized need for a better career opportunities.			Lawyers leaving state government going into private practice may not be able to be solved by the Classification System.

HIGHWAY

REVENUE

ADMINISTRATION

1. Are the current minimum qualifications accurate?
2. Should a paralegal class specification be established?
3. Should there be more flexibility in the pay plan?

Five years is excessive resulting in turnover of lawyers.

Change minimum experience to three years for Lawyer III.

Minimum qualifications are excessive.

Establish paralegal, require 1 year of law school.

Paralegal is an absolute must for the Department of Revenue. Require one to two years of college and one to two years of experience.

Comments

Exempt lawyers from the pay plan. If not exempt; provide more flexibility based on meritorious service in order to retain lawyers.

More flexibility within grade based on established performance standards for lawyers and other classes in order to retain competent employees.

Establish paralegal for use in large departments.

Establish paralegal for use in large departments.

Turnover is partially caused by retaining outside legal council. Pay plan is not competitive at grade 14 and above.

MILITARY AFFAIRS

1. Are the current minimum qualifications accurate?	Not qualified to comment. No lawyers.
2. Should a para-legal class specification be established?	Not qualified to comment. No lawyers.
3. Should there be more flexibility in the pay plan?	Not in favor of flexibility within grade.

Comments

February 11, 1978

DEPARTMENT OF ADMINISTRATION

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
6/73	J. Mike Young + FY 76, FY 77, FY 78	1975-1978 (3)
10/76	Robert Waller + FY 76, FY 77, FY 78	1975-1978 (3)
6/77	Dave Stiteler + FY 78	1977-1978 (1)
4/65	David L. Jackson - FY 78	
6/65	Sam E. Haddon - FY 76, FY 78	
6/70	George Loselben - FY 76, FY 77	
6/64	Charles Smith - FY 76, FY 77, FY 78	
3/49	Michael J. Hughes - FY 76, FY 77	
6/73	John F. Sullivan - (Michael J. Hughes)	
3/46	Weymouth Symmes- (National Indemnity Co.)	
6/69	Richard Cebull -	

DEPARTMENT OF AGRICULTURE

None

DEPARTMENT OF BUSINESS REGULATION

6/77	Robert Wood + FY 77, FY 78	1977-1978 (1)
6/74	James H. Wood + FY 76, FY 77, FY 78	1975-1978 (3)
6/73	James H. McFarland + FY 76, FY 77	1975-1977 (2)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>CAMPAIGN FINANCES AND PRACTICES</u>		
12/75	Jack Lowe + FY 76, FY 77, FY 78	1975-1978 (3)
6/52	Leo G. Graybill - FY 77	
<u>DEPARTMENT OF COMMUNITY AFFAIRS</u>		
6, 76	Dan Diemert + FY 76, FY 77, FY 78	1976-1978 (2)
10/74	Richard M. Weddle + FY 76, FY 77, FY 78	1972-1978 (6)
10/74	Christopher H. Buslee + FY 76, FY 77	1975-1976 (1)
6/75	Urban Bear Don't Walk + FY 76	1975-1976 (1)
 <u>Roger Tippy -</u> FY 78		
<u>DEPARTMENT OF FISH AND GAME</u>		
7/75	F. Woodside Wright + FY 77, FY 78	1976-1978 (2)
Clayton Herron - FY 76, FY 77, FY 78		
Urban Roth - FY 77, FY 78		
12/69	Frank Morrison - FY 78	
Paul Lenzini - FY 78		
<u>GOVERNOR'S OFFICE</u>		
6/76	D. Robert Lohn + FY 76, FY 77, FY 78	1976-1978 (2)

Date Admitted
to Mont. Bar

Attorney

Years with
Agency

GOVERNOR'S OFFICE

11/64	Larry Elison + FY 76	1975-1976 (1)
6/57	Urban Roth ?	
6/75	Joan Uda + FY 76, FY 77	1976-1977 (1)
10/75	Clyde Peterson + FY 76, FY 77	1976-1977 (1)
6/75	Lee Heiman, Jr. + FY 76, FY 77	1976-1977 (1)
6/74	Thomas Boland + FY 76, FY 77	
6/61	Tom Dowling - FY 78	

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

10/73	G. Steven Brown + FY 76, FY 77 - FY 78	1975-1977 (2)
10/76	Mona F. Jamison + FY 77, FY 78	1976-1978 (2)
6/74	Eleanor A. Parker + FY 76, FY 77, FY 78	1976-1978 (2)
6/75	Stanly Bradshaw + FY 77, FY 78	1976-1978 (2)
6/77	Douglas B. Olson + FY 78	1977-1978 (1)
6/71	Sandra Muckelston + FY 77, FY 78	1977-1978 (1)
6/73	A. Michael Salvangi + FY 76, FY 77 - FY 77	1974-1976 (2)
10/73	Richard Klinger + FY 76	1974-1976 (2)
11/49	C. W. Leaphart - FY 76, FY 77, FY 78	
	Tooze, Keer, Peterson, Marshall & Schenker - FY 76, FY 77	

COMMISSIONER OF HIGHER EDUCATION

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
2/54	Louis Forsell + FY 77, FY 78	1977-1978 (1)
	Mike Sehestedt + FY 76, FY 77	1976 (1)
7/75	Steven Veazie + FY 76, FY 77, FY 78	1976-1978 (2)
	Barry Hjort + FY 76, FY 77	1975-1976 (1)
	George Mitchell + FY 76, FY 77, FY 78	1975-1978 (3)
6/75	Catherine Swift + FY 76, FY 77, FY 78	1975-1978 (3)
	Roger Flair + FY 78	1977-1978 (1)
	Milton Datsopoulos - FY 76	

DEPARTMENT OF HIGHWAYS

10/36	Nicholas A. Rotering + FY 76, FY 77, FY 78	1962-1978 (16)
6/63	James R. Beck + FY 76, FY 77, FY 78	1969-1978 (9)
6/56	Donald A. Douglas + FY 76, FY 77, FY 78	1969-1978 (9)
6/68	Jack A. Holstrom + FY 76, FY 77, FY 78	1971-1978 (7)
10/67	Frank D. Meglen + FY 76, FY 77, FY 78	1967-1978 (11)
6/63	M. Gene McLatchy + FY 78	1977-1978 (1)
9/49	Daniel J. Sullivan + FY 76, FY 77, FY 78	1960-1978 (18)
6/68	J. C. Weingartner + FY 77, FY 78	1977 (1)
10/38	Harry C. Alley + FY 76, FY 77, FY 78	1962-1977 (15)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
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DEPARTMENT OF HIGHWAYS (continued)

6/72	James M. Driscoll + FY 76, FY 77	1972-1976 (4)
6/31	Leo J. Kottas + FY 76	1970-1975 (5)
10/60	Don Garrity - FY 76	
9/49	William T. Kelly - FY 76, FY 77	
	Roe & Kiely - FY 76	
	James, Sogard & Fopp - FY 76, FY 77	

DEPARTMENT OF INSTITUTIONS

6/70	Nick Rotering + FY 76, FY 77, FY 78	1974-1978 (4)
10/50	John A. Hauf - FY 76, FY 77, FY 78	
6/46	M. Kermit Daniels - FY 76, FY 77, FY 78	
6/55	Mark P. Sullivan - FY 76, FY 77, FY 78	
6/50	Robert Holland - FY 76, FY 77, FY 78	
11/49	C. W. Leaphart ?	
6/72	W. W. Leaphart ?	
10/60	Don Garrity - FY 77, FY 78	
10/56	Robert Keller - FY 77	

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
---------------------------------------	-----------------	------------------------------

DEPARTMENT OF INSTITUTIONS (continued)

6/72 Terry Wallace -
FY 78

2/70 Robert Adams -
FY 77

DEPARTMENT OF JUSTICE/ATTORNEY GENERAL

6/67	Mike Greely + FY 77, FY 78	1977-1978 (1)
10/75	Patrick Driscoll + FY 77, FY 78	1977-1978 (1)
6/68	J. C. Weingartner + FY 76	1969-1976 (7)
6/74	Lon Maxwell + FY 76, FY 77	1975-1976 (1)
6/74	Thomas Budewitz + FY 76	1974-1976 (2)
6/76	J. Mayo Ashley + FY 77, FY 78	1977-1978 (1)
10/73	Allen B. Chronister + FY 77, FY 78	1977-1978 (1)
6/73	John North + FY 76	1975-1976 (1)
10/70	Denny Moreen + FY 77, FY 78	1977-1978 (1)
6/75	Donald Smith + FY 76	1976 (1)
6/75	Jock Anderson + FY 76	1975-1976 (1)
6/76	Charles R. Anderson + FY 77, FY 78	1977-1978 (1)
6/73	Marc Racicot + FY 77, FY 78	1977-1978 (1)
6/75	Charles Erdman + FY 76	1975-1976 (1)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>DEPARTMENT OF JUSTICE/ATTORNEY GENERAL (continued)</u>		
10/77	Mike McGrath + FY 77, FY 78	1977-1978 (1)
6/77	Brenda Gilmer + FY 77, FY 78	1977-1978 (1)
10/77	Mike McCarter + FY 77, FY 78	1977-1978 (1)
6/71	John Atkins + FY 76	1973-1976 (3)
11/75	N. Clyde Peterson + FY 78	1977-1978 (1)
10/77	Sheri Sprigg + FY 78	1978 (1)
6/69	Gary L. Graham ?	
6/61	Thomas Dowling - FY 77, FY 78	1977-1978 (1)
10/56	Robert S. Keller - FY 76, FY 77, FY 78	
8/60	Charles F. Angel - FY 76, FY 77, FY 78	
6/70	Neil Ugrin - FY 76, FY 77, FY 78	
6/61	Arthur Ayers - FY 76, FY 77, FY 78	
6/67	Doug Dasinger - FY 76, FY 77, FY 78	
	Walter Murfitt - FY 76, FY 77	1969-1977 (8)
	Paul Reynolds - FY 76, FY 77	1972-1977 (5)
	Marshall Murray - FY 76, FY 77	1972-1976 (4)
6/66	Jerome J. Cate - FY 77, FY 78	1977-1978 (1)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>DEPARTMENT OF LABOR AND INDUSTRY</u>		
6/74	Jerry Painter + FY 77, FY 78	1976-1978 (2)
6/71	Norman H. Grosfield + FY 76, FY 77, FY 78	1976-1978 (2)
	Timothy W. Reardon + FY 77, FY 78	1976-1978 (2)
1/74	Rosemary Zion + FY 76, FY 77, FY 78	1976-1978 (2)
10/76	Patrick Flaherty + FY 76, FY 78	1977-1978 (1)
10/75	Bruce Barrett + FY 76	1975-1976 (1)
6/76	Mayo Ashley + FY 77, - FY 77	1976 (1)
6/51	Moody Brickett + FY 76, FY 77, FY 78	
6/73	Peter Maltese + FY 76	1973-1976 (3)
10/74	Thomas M. Keegan + FY 76, FY 77 - FY 77, FY 78	1975-1976 (1)
6/74	Eleanor Parker + FY 76	1974-1976 (2)
	Frederick Huszagh - FY 77	
10/57	Thomas Hanrahan - FY 78	
12/46	Lloyd Skedd - FY 77, FY 78	
	Kenneth R. Strong - FY 76, FY 77	
6/65	Joseph Reber - FY 77	
6/70	Neil Ugrin - FY 76, FY 77, FY 78	

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
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DEPARTMENT OF LABOR AND INDUSTRY (continued)

12/51	Patrick Hooks - FY 78	
6/69	Andrew J. Utick - FY 76, FY 77	
6/62	Kenneth R. Wilson - FY 77	
4/65	David L. Jackson - FY 78	
	Judy Muldover + (VISTA) FY 78	
	Terry Claussen + (VISTA) FY 78	
	John Albrecht - (VISTA) FY 77, FY 78	

DEPARTMENT OF LIVESTOCK

10/74	Charles M. Brown + FY 76, FY 77, FY 78	1974-1978 (4)
10/67	Peter C. Pauly - FY 76, FY 77	
	Schleusner & Jones - FY 77	
	Pacific Legal Foundation - FY 76	

DEPARTMENT OF MILITARY AFFAIRS

None

DEPARTMENT OF NATURAL RESOURCES

6/70	Ted J. Doney + FY 76, FY 77, FY 78	1972-1978 (6)
11/76	Richard Gordon + FY 77, FY 78	1977-1978 (1)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>DEPARTMENT OF NATURAL RESOURCES (continued)</u>		
6/73	Donald D. MacIntyre + FY 76, FY 77, FY 78	1973-1978 (5)
6/74	Gary L. Spaeth + FY 76, FY 77, FY 78	1974-1978 (4)
10/73	Allen Chronister + FY 76, FY 77	1973-1976 (3)
10/60	Robert T. Cummins - FY 76, FY 77, FY 78	
6/63	Richard J. Andriolo - FY 77	
10/60	Donald A. Garrity - FY 76, FY 77, FY 78	
10/71	Joseph W. Sabol - FY 78	
6/41	Henry Loble - FY 76, FY 77, FY 78	
6/49	Carl Davis - FY 76, FY 77	
6/72	James Driscoll - FY 77, FY 78	
	Boone, Karlberg & Haddon - FY 77	
	Tooze, Kerr, Peterson - FY 76, FY 77	
<u>PROFESSIONAL AND OCCUPATIONAL LICENSING</u>		
6/72	Timothy J. Meloy + FY 76, FY 77, FY 78	1973-1978 (5)
6/64	John Poston - FY 76, FY 77, FY 78	
2/71	Kenneth D. Tolliver - FY 77	
6/74	David N. Hull - FY 77, FY 78	

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
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PROFESSIONAL AND OCCUPATIONAL LICENSING (continued)

12/51	Patrick F. Hooks - FY 77, FY 78
6/72	W. W. Leaphart - FY 76
6/49	John Risken - FY 76
11/52	Hubert Massman - FY 76
10/36	Victor H. Fall - FY 76
10/71	Peter Michael Meloy - FY 77
6/64	Richard Heard - FY 76, FY 77
6/68	Warren Wenz - FY 76
6/73	Charles Gravely - FY 76, FY 77
6/69	Laurence Eck - FY 76
6/73	Gregory Jackson - FY 76, FY 77
6/41	Baxter Larson - FY 77
6/22	Paul Smith - FY 77
/74	A. Clifford Edwards - FY 78
6/75	Joel Guthals - FY 78
	Cannon & Gillespie - FY 76, FY 77
	Smith & Harper - FY 77

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>PUBLIC SERVICE COMMISSION</u>		
7/76	Dennis R. Lopach + FY 75, FY 76	1976-1978 (2)
	Alan J. Roth	
7/76	Robert F. W. Smith + FY 77, FY 78	1976-1978 (2)
2/75	Russell L. Doty, Jr. + FY 76	1975-1976 (1)
1/69	Charles H. Dickman + FY 76, FY 77, FY 78	1973-1977 (4)
	Jim Paine + FY 78	1977-1978 (1)
9/60	William O'Leary	
<u>DEPARTMENT OF REVENUE</u>		
6/73	Robert W. Corcoran + FY 76, FY 77, FY 78	1975-1978 (3)
6/74	Jon A. Meredith + FY 77, FY 78	1976-1978 (2)
6/75	Donald S. Smith + FY 77, FY 78	1976-1978 (2)
6/76	James Tillotson + FY 76, FY 77 - FY 78	1976-1978 (2)
6/72	R. Bruce McGinnis + FY 76, FY 77, FY 78	1973-1978 (5)
6/77	Deirdre Boggs + FY 78	1977-1978 (1)
6/77	Calvin Simchaw + FY 78	1977-1978 (1)
6/74	Lon Maxwell ?	
9/48	James Senechal + FY 76	1974-1976 (2)
10/73	Joseph Massman FY 76 - FY 77	1974-1976 (2)

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
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OFFICE OF PUBLIC INSTRUCTION (continued)

6/73	Margaret Borg + FY 76, FY 77	1974-1976 (2)
6/75	Tom Malee + FY 76, FY 77	1976 (1)
6/76	Ann Smoyer + FY 76, FY 77 - FY 77	1976-1977 (1)
4/65	David Jackson - FY 76, FY 77, FY 78	
7/76	James L. Norris ?	
	Ted De Loze -	
10/62	Neil Lynch - FY 78	
	James Law Firm - FY 78	
	Turnage Law Firm - FY 78	
	Leaphart Law Firm - FY 76	
	Loble, Picotte, & Pauly - FY 77, FY 78	
	Luxan, Murfitt & Davis - FY 77, FY 78	
	Swanberg, Roby & Matteucci - FY 76, FY 77, FY 78	
	Poore, McKenzie & Roth - FY 76, FY 77, FY 78	

SECRETARY OF STATE

None

STATE AUDITOR

6/75	Charles Erdmen + FY 77, FY 78	1977-1978 (1)
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<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
<u>STATE AUDITOR (continued)</u>		
2/54	Louis Forsell + FY 76	1975-1977 (2)
3/51	John Bell - FY 77	
<u>DEPARTMENT OF STATE LANDS</u>		
6/76	David W. Woodgerd + FY 77, FY 78 - FY 77	1977-1978 (1)
6/73	John F. North + FY 77, FY 78 - FY 77	1977-1978 (1)
6/73	Leo Berry, Jr. + FY 76, FY 77	
6/75	Alan L. Joscelyn + FY 76, FY 77 - FY 77, FY 78	
6/76	Mike Sherwood - FY 76	
	Scribner & Huss - FY 76	
	Scott, Linnell, Neill & Newell - FY 76, FY 77	
<u>DEPARTMENT OF SOCIAL & REHABILITATION SERVICES</u>		
6/75	Joan Uda + FY 78	1977-1978 (1)
6/76	Richard A. Weber, Jr. + FY 76, FY 77, FY 78	1976-1978 (2)
2/63	Michael McLatchy + FY 76, FY 77, FY 78	1975-1977 (2)
	Walter Perry + FY 78	1977-1978 (1)
6/56	Thomas H. Mahan - FY 76, FY 77, FY 78	
6/72	W. W. Leaphart - FY 77, FY 78	

<u>Date Admitted to Mont. Bar</u>	<u>Attorney</u>	<u>Years with Agency</u>
6/62	Alex George - FY 77, FY 78	

6/73	Barry Hjort - FY 77, FY 78
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OFFICE OF PUBLIC INSTRUCTION

6/76	W. Corbin Howard + FY 76, FY 77, FY 78
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6/73	Carroll Blend + FY 76	1976-1977 (1)
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11/77	W. Macon Richardson + FY 78	1978 (1)
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Cannon & Gillespie - FY 77, FY 78

C O M M I T T E E B I L L

1

BILL NO. _____

2

INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE APPROPRIATE,
5 ECONOMICAL, AND EFFICIENT USE OF ATTORNEYS BY THE EXECUTIVE
6 BRANCH; TO PROVIDE A LEGAL ASSISTANCE PROGRAM IN THE OFFICE
7 OF THE ATTORNEY GENERAL; AND TO CREATE A LEGAL SERVICES
8 REVIEW BOARD."

9

10 WHEREAS, the employment of experienced, full-time staff
11 attorneys by the executive branch is an economical,
12 efficient, and effective means of meeting the state's legal
13 services needs; and

14 WHEREAS, the use of contract or retained special legal
15 counsel should be limited and closely scrutinized; and

16 WHEREAS, a pool of highly competent full-time staff
17 attorneys within the office of the attorney general should
18 be the "law firm" of first resort for any legal services
19 needs beyond the capacity or ability of state executive
20 agencies; and

21 WHEREAS, there are instances when it is necessary for
22 the executive branch to retain or otherwise hire special
23 legal counsel outside of government to meet the state's
24 legal services needs.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **NEW SECTION.** Section 1. Intent. It is the intent of
2 the legislature to:

3 (1) insure appropriate, economical, and efficient use
4 of attorneys by the executive branch of state government;

5 (2) provide a pool of highly competent full-time staff
6 attorneys available to state executive agencies within the
7 office of the attorney general; and

8 (3) create a mechanism for review and approval of a
9 state executive agency request to seek legal services
10 outside of government.

11 **NEW SECTION.** Section 2. Definitions. As used in this
12 [act], the following definitions apply:

13 (1) "Board" means the legal services review board.

14 (2) "special legal counsel" means an attorney licensed
15 to practice law who is not employed by a state executive
16 agency on a full-time basis.

17 (3) "State executive agency" means an elective
18 official in the executive branch of state government or an
19 office, department, board, bureau, commission, or other
20 similar instrumentality in the executive branch of state
21 government.

22 **NEW SECTION.** Section 3. Staff attorneys authorized.
23 A state executive agency may hire an attorney on a full-time
24 basis, within the limits of its appropriation; however, this
25 does not authorize a state executive agency to hire

1 full-time staff attorneys in excess of the number employed
2 on August 4, 1978, without the express consent of the
3 legislature.

4 NEW SECTION. Section 4. Special legal counsel
5 authorized. A state executive agency may, within the limits
6 of its appropriation, hire, retain, or otherwise contract
7 with additional special legal counsel to meet its legal
8 services needs as if, and only if, granted written approval
9 from the legal services review board as provided in
10 [sections 9 through 15].

11 NEW SECTION. Section 5. Representing state executive
12 agency -- special assistant attorney general designation not
13 necessary. (1) Notwithstanding 2-15-501, a full-time staff
14 attorney or a special legal counsel authorized by the state
15 legal services review board may represent a state executive
16 agency in any court or judicial proceeding.

17 (2) A full-time staff attorney or a special legal
18 counsel authorized by the state legal services review board,
19 need not be designated a special assistant attorney general
20 in order to represent a state executive agency in any legal
21 proceeding.

22 NEW SECTION. Section 6. Legal assistance program --
23 subject to classification and pay plan. (1) There is a legal
24 assistance program within the office of the attorney general
25 composed of a pool of full-time staff attorneys and related

1 supportive staff hired by the attorney general.

2 (2) An individual hired to work for the legal
3 assistance program is not a member of the attorney general's
4 personal staff and is subject to the state classification
5 and pay plan.

6 NEW SECTION. Section 7. Legal assistance program --
7 function. The legal assistance program shall, if staff is
8 available, render legal assistance, upon request, to any
9 state executive agency with legal services needs that exceed
10 the capacity or utility of that agency's existing legal
11 staff.

12 NEW SECTION. Section 8. Attorney-client relationship.
13 An attorney employed by the attorney general and assigned to
14 the legal assistance program shall maintain a strict
15 attorney-client relationship with any state executive agency
16 requesting legal assistance.

17 NEW SECTION. Section 9. Legal services review board.
18 There is a legal services review board, which shall review
19 and approve or disapprove each written request from a state
20 executive agency to retain, contract with, or otherwise
21 employ a special legal counsel.

22 NEW SECTION. Section 10. Composition of board. The
23 board consists of three members. The members are:

24 (1) the budget director or his designated
25 representative, who shall act as chairman of the board;

1 (2) the attorney general or his designated
2 representative; and

3 (3) the chief legal counsel to the governor.

4 NEW SECTION. Section 11. Review and written approval
5 required. The legal services review board shall review and
6 approve or disapprove in writing each request by a state
7 executive agency to use a special legal counsel to meet its
8 legal services needs.

9 NEW SECTION. Section 12. Expenditure of funds without
10 approval prohibited. No state executive agency may expend
11 public funds to temporarily retain or employ special legal
12 counsel for the purpose of rendering legal services of any
13 type to the agency without:

14 (1) making a prior written request for legal
15 assistance to the legal assistance program and receiving
16 written notification that the available legal resources
17 within the office of the attorney general are being used to
18 the limits of their capacity or ability; and

19 (2) receiving the prior written approval of the legal
20 services review board.

21 NEW SECTION. Section 13. Criteria for approval. The
22 board may not approve a state executive agency's request to
23 use a special legal counsel unless the board determines
24 that:

25 (1) the state executive agency's existing full-time

1 legal staff is being used efficiently to the limits of its
2 capacity or ability;

3 (2) the available legal resources within the office of
4 the attorney general are being used efficiently to the
5 limits of their capacity or ability and, therefore, cannot
6 respond to the agency's request; and

7 (3) at least one of the following conditions exist to
8 justify the need for a special legal counsel:

9 (a) a temporary need exists for expertise in a
10 specialized area of law;

11 (b) an unusual and temporary increase exists in the
12 state executive agency's legal services workload;

13 (c) a substantial conflict of interest exists
14 affecting all of the full-time staff attorneys or all but a
15 number insufficient to handle the matter; or

16 (d) a temporary need for extensive legal work exists
17 in a geographic area remote from the state executive office
18 or offices.

19 ~~NEW SECTION.~~ Section 14. Monitoring of employment --
20 strict accountability. The board shall:

21 (1) review the terms of employment prior to granting
22 approval to a state executive agency's request for the use
23 of a special legal counsel to meet its legal services needs;

24 (2) monitor all contracts resulting from the approval
25 of a request for the use of a special legal counsel,

1 periodically review the criteria under [section 13], and
2 terminate those contracts where such criteria have ceased to
3 exist;

4 (3) require each state executive agency to strictly
5 account for all fees, expenses, or other costs associated
6 with the use of a special legal counsel; and

7 (4) require each state executive agency to maintain a
8 public record of the terms of employment, the total amount
9 of compensation, and a full and itemized statement showing
10 hours worked and expenses incurred for all special legal
11 counsel employed by the state executive agency.

12 NEW SECTION. Section 15. Board not to stipulate
13 particular attorney. The board may not stipulate, as a
14 condition of approval, the individual special legal counsel
15 to be employed by the state executive agency. The right to
16 hire the individual attorney who will serve as special legal
17 counsel rests solely with the state executive agency or the
18 appropriate elected official.

19 Section 16. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

-End-

